
AMENDED AND RESTATED
ISSUING AND PAYING AGENT AGREEMENT

between

CITY OF SAN JOSE

and

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Issuing and Paying Agent

Dated as of September 1, 2009

Amending and Restating the Issuing and Paying Agent Agreement,
dated as of November 1, 1999, as amended and supplemented

RELATING TO
THE CITY OF SAN JOSE
SAN JOSE INTERNATIONAL AIRPORT
SUBORDINATED COMMERCIAL PAPER NOTES

TABLE OF CONTENTS

Page

ARTICLE I EQUALITY OF SECURITY; DEFINITIONS; CONTENT OF CERTIFICATES AND OPINIONS

SECTION 1.01.	Equality of Security	4
SECTION 1.02.	Definitions.....	4
SECTION 1.03.	Content of Certificates and Opinions.....	19

ARTICLE II THE NOTES

SECTION 2.01.	Authorization of Notes; Supply of Notes.....	20
SECTION 2.02.	Terms of the Notes.....	23
SECTION 2.03.	Form of Notes	24
SECTION 2.04.	Execution of Notes.....	24
SECTION 2.05.	Authentication of Notes	25
SECTION 2.06.	Notes Mutilated, Lost, Destroyed or Stolen.....	26
SECTION 2.07.	Cancellation of Notes.....	26
SECTION 2.08.	Master Note; Registration of Notes	26

ARTICLE III ISSUE AND SALE OF NOTES

SECTION 3.01.	Issuance and Sale of Notes	29
SECTION 3.02.	Proceeds of Sale of Notes	31
SECTION 3.03.	Issuance of Additional Series of Notes	33
SECTION 3.04.	Proceedings for Issuance of Additional Series of Notes.....	34
SECTION 3.05.	Limitations on the Issuance of Obligations Payable from Surplus Revenues	35

ARTICLE IV NOTE PROCEEDS FUND

SECTION 4.01.	Establishment and Application of Note Proceeds Fund	36
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ARTICLE V SURPLUS REVENUES

SECTION 5.01.	Pledge of Surplus Revenues; Note Repayment Fund	37
SECTION 5.02.	Allocation of Surplus Revenues: Debt Service Fund; Reimbursement Agreement Fund	38
SECTION 5.03.	Draws Under Letters of Credit; Payment of Principal and Interest; Enforcement.....	39
SECTION 5.04.	Moneys in Funds and Accounts.....	40
SECTION 5.05.	Investment of Moneys in Funds.....	40

ARTICLE VI COVENANTS OF THE CITY

SECTION 6.01.	Punctual Payment.....	41
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TABLE OF CONTENTS
(continued)

	Page
SECTION 6.02.	Extension of Payment of Notes..... 41
SECTION 6.03.	Waiver of Laws..... 41
SECTION 6.04.	Further Assurances..... 41
SECTION 6.05.	Against Encumbrances..... 41
SECTION 6.06.	Accounting Records and Financial Statements..... 41
SECTION 6.07.	Rebate Fund 42
SECTION 6.08.	Tax Covenants 43
SECTION 6.09.	Maintenance of Issuing and Paying Agent 43
SECTION 6.10.	Letters of Credit; Alternate Facility 43
SECTION 6.11.	Appointment of Dealer 44
SECTION 6.12.	Provision of Report to Bank 44

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES OF NOTEHOLDERS

SECTION 7.01.	Events of Default 44
SECTION 7.02.	Application of Surplus Revenues and Other Funds After Default 45
SECTION 7.03.	Issuing and Paying Agent to Represent Noteholders..... 46
SECTION 7.04.	Noteholders' Direction of Proceedings..... 46
SECTION 7.05.	Limitation on Noteholders' Right to Sue..... 47
SECTION 7.06.	Absolute Obligation of the City 47
SECTION 7.07.	Termination of Proceedings..... 47
SECTION 7.08.	Remedies Not Exclusive 48
SECTION 7.09.	No Waiver of Default..... 48

ARTICLE VIII

THE ISSUING AND PAYING AGENT

SECTION 8.01.	Appointment: Duties, Immunities and Liabilities of Issuing and Paying Agent..... 48
SECTION 8.02.	Merger or Consolidation..... 50
SECTION 8.03.	Liability of Issuing and Paying Agent 50
SECTION 8.04.	Right of Issuing and Paying Agent to Rely on Documents 52
SECTION 8.05.	Compensation and Indemnification of Issuing and Paying Agent..... 52

ARTICLE IX

**MODIFICATION OR AMENDMENT OF THIS ISSUING AND PAYING AGENT
AGREEMENT**

SECTION 9.01.	Amendments Permitted..... 53
SECTION 9.02.	Effect of Supplement 55
SECTION 9.03.	Amendment of Particular Notes..... 55

ARTICLE X

DEFEASANCE

SECTION 10.01.	Payment of Notes..... 55
SECTION 10.02.	Discharge of Liability on Notes..... 56

TABLE OF CONTENTS
(continued)

	Page
SECTION 10.03. Deposit of Money or Securities with Issuing and Paying Agent	56
SECTION 10.04. Payment of Notes After Discharge of Issuing and Paying Agent Agreement.....	57
ARTICLE XI MISCELLANEOUS	
SECTION 11.01. Liability of City Limited to Surplus Revenues	57
SECTION 11.02. Successor Is Deemed Included in All References to Predecessor	57
SECTION 11.03. Limitation of Rights to City. Issuing and Paying Agent, Bank and Noteholders	58
SECTION 11.04. Waiver of Notice.....	58
SECTION 11.05. Destruction or Delivery of Canceled Notes	58
SECTION 11.06. Severability of Invalid Provisions.....	58
SECTION 11.07. Notices	58
SECTION 11.08. Notice to Rating Agencies	59
SECTION 11.09. Evidence of Rights of Noteholders	60
SECTION 11.10. Disqualified Notes	60
SECTION 11.11. Money Held for Particular Notes	60
SECTION 11.12. Funds and Accounts.....	61
SECTION 11.13. Article and Section Headings and References	61
SECTION 11.14. Waiver of Personal Liability	61
SECTION 11.15. Governing Law	61
SECTION 11.16. Business Day.....	61
SECTION 11.17. Effective Date of Amended and Restated Issuing and Paying Agent Agreement.....	61
SECTION 11.18. Execution in Counterparts.....	61
EXHIBIT A Form of Note A-1	
EXHIBIT B Form of Taxable Note.....	B-1
EXHIBIT C Form of DTC Municipal Commercial Paper Master Note	C-1
EXHIBIT D Form Issuance Request to Paying Agent	D-1

An extra section break has been inserted above this paragraph. Do not delete this section break if you plan to add text after the Table of Contents/Authorities. Deleting this break will cause Table of Contents/Authorities headers and footers to appear on any pages following the Table of Contents/Authorities.

AMENDED AND RESTATED ISSUING AND PAYING AGENT AGREEMENT

This AMENDED AND RESTATED ISSUING AND PAYING AGENT AGREEMENT, dated as of September 1, 2009 (the "Issuing and Paying Agent Agreement"), by and between the CITY OF SAN JOSE, a municipal corporation duly organized and existing under its charter and the Constitution of the State of California (the "City"), and DEUTSCHE BANK TRUST COMPANY AMERICAS, a New York State chartered bank, as issuing and paying agent (the "Issuing and Paying Agent");

WITNESSETH:

WHEREAS, the City is authorized by its charter to issue notes from time to time for the purpose of financing capital project costs in connection with the Norman Y. Mineta San José International Airport and to refund such notes; and

WHEREAS, the City determined to provide for the authentication and delivery of commercial paper notes (the "Notes"), to establish and declare the terms and conditions upon which the Notes shall be issued and secured and to secure the payment of the principal thereof and interest thereon; and

WHEREAS, pursuant to an issuing and paying agent agreement, dated as of November 1, 1999 (the "Original Agreement"), the City previously authorized the issuance of its San José International Airport Subordinated Commercial Paper Notes, Series A (Non-AMT) (the "Original Series A Notes"), its San José International Airport Subordinated Commercial Paper Notes, Series B (AMT) (the "Series B Notes") and its San José International Airport Subordinated Commercial Paper Notes, Series C (Taxable) (the "Series C Notes"), secured by and payable from Surplus Revenues, to finance and refinance various capital projects in connection with the City's Norman Y. Mineta San José International Airport and to refund outstanding Series A Notes, Series B Notes and Series C Notes; and

WHEREAS, the City may authorize the issuance of one or more additional Series of Notes, payable from Surplus Revenues and secured by the pledge made under the Original Agreement equally and ratably with any other Notes previously issued, and the City may issue, and the Issuing and Paying Agent may authenticate and deliver to one or more of the Dealers, Notes of any such Series, in such principal amount as shall be determined by the City, but only, with respect to each such additional Series of Notes issued after the Notes, upon compliance by the City with the conditions and provisions of the Original Agreement; and

WHEREAS, pursuant to Resolutions adopted by the Council of the City on March 25, 2008, the City authorized and approved an increase in the maximum principal amount of Notes that may be Outstanding at any one time from \$450,000,000 to \$600,000,000 and the issuance from time to time of three additional Series of Notes and authorized the execution and delivery by the City of the First Amendment and Supplement to the Issuing and Paying Agent Agreement, dated as of April 1, 2008 (the "Amendment" and, together with the Original Agreement, the "Amended Original Agreement"); and

WHEREAS, the City authorized the issuance of three additional Series of Notes, designated "City of San José San José International Airport Subordinated Commercial Paper Notes, Series D (Non-AMT)" (the "Original Series D Notes"), "City of San José San José International Airport Subordinated Commercial Paper Notes, Series E (AMT)" (the "Series E Notes") and "City of San José San José International Airport Subordinated Commercial Paper Notes, Series F (Taxable)" (the "Series F Notes" and together with the Original Series A Notes, the Series B Notes, the Series C Notes, the Original Series D Notes and the Series E Notes, the "Outstanding Notes"), pursuant to the Amended Original Agreement; and

WHEREAS, pursuant to Section 9.01(b) of the Original Agreement, the City may adopt a Supplement to the Issuing and Paying Agent Agreement without the consent of any Noteholders to make such provisions as are necessary and appropriate to ensure the exclusion of interest on a Series of Notes from gross income for federal income taxation and for any other purpose that does not materially and adversely affect the interests of the Owners of the Notes or the Banks; and

WHEREAS, certain provisions of The American Reinvestment and Recovery Act of 2009 (the "ARRA") provide that interest on commercial paper notes that are issued during 2009 and 2010 and that would otherwise constitute "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"), is not subject to the alternative minimum tax under the Code; and

WHEREAS, in order to take advantage of such provisions of the ARRA, it is necessary to, and the City desires to, provide for the redesignation of the Original Series A Notes in two subseries, known as the "City of San José San José International Airport Subordinated Commercial Paper Notes, Series A-1 (Non-AMT)" (the "Series A-1 Notes") and the "City of San José San José International Airport Subordinated Commercial Paper Notes, Series A-2 (Non-AMT/Private Activity)" (the "Series A-2 Notes" and, together with the Series A-1 Notes, the "Series A Notes"); and

WHEREAS, the City further desires to provide for the future redesignation of the Original Series D Notes in two subseries, known as the "City of San José San José International Airport Subordinated Commercial Paper Notes, Series D-1 (Non-AMT)" (the "Series D-1 Notes") and the "City of San José San José International Airport Subordinated Commercial Paper Notes, Series D-2 (Non-AMT/Private Activity)" (the "Series D-2 Notes" and, together with the Series D-1 Notes, the "Redesignated Series D Notes"), upon the satisfaction of certain conditions contained herein; and

WHEREAS, the Series A-2 Notes and, if issued, the Series D-2 Notes will be issuable to finance and refinance the costs of various capital projects in connection with the Norman Y. Mineta San José International Airport and to refund or to pay debt service on obligations of the City issued to finance or refinance such costs and will be payable on a parity with other Outstanding Notes from the Surplus Revenues; and

WHEREAS, interest on the Series A-2 Notes and, if issued, the Series D-2 Notes, which Series A-2 Notes and Series D-2 Notes will constitute "private activity bonds" within the

meaning of Section 141 of the Code, will not be subject to the alternative minimum tax under the Code, as permitted by The American Reinvestment and Recovery Act of 2009; and

WHEREAS, the Series A-1 Notes and the Series A-2 Notes will be secured by the Series A/B Letter of Credit (as defined in the First Reimbursement Agreement) issued pursuant to the First Reimbursement Agreement; and

WHEREAS, if issued, the Series D-1 Notes and the Series D-2 Notes are expected to be secured by the Letter of Credit issued pursuant to the Second Reimbursement Agreement;

WHEREAS, pursuant to Section 9.01(b) of the Original Agreement the City may enter into this Issuing and Paying Agent Agreement and may provide for the redesignation of the Original Series A Notes and the future redesignation of the Series D Notes without the prior written consent of the Banks; and

WHEREAS, pursuant to Section 8.1 of the First Reimbursement Agreement the City may enter into this Issuing and Paying Agent Agreement and may provide for the redesignation of the Original Series A Notes and the future redesignation of the Original Series D Notes without the consent of the Required Banks (as defined in the First Reimbursement Agreement); and

WHEREAS, pursuant to Section 8.1 of the Second Reimbursement Agreement the City may enter into this Issuing and Paying Agent Agreement and may provide for the redesignation of the Series A Notes and the future redesignation of the Original Series D Notes without the consent of the Bank (as defined in the Second Reimbursement Agreement); and

WHEREAS, the City has determined that it is desirable to amend and restate the Original Agreement in connection with the provision for the redesignation of the Original Series A Notes and the future redesignation of the Original Series D Notes and intends this Issuing and Paying Agent Agreement to constitute a Supplement to the Amended Original Agreement; and

WHEREAS, the execution and delivery of this Issuing and Paying Agent Agreement has in all respects been duly and validly authorized by Resolution No. _____ duly passed and approved by the City Council on [September 1, 2009]; and

WHEREAS, on October 2, 1984, the City Council of the City adopted Resolution No. 57794 providing for the issuance of obligations secured by and payable from the revenues of the Enterprise, as defined in said resolution (said resolution, as supplemented and amended from time to time, the "Master Bond Resolution"); and

WHEREAS, the City has determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this Issuing and Paying Agent Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Issuing and Paying Agent Agreement;

NOW, THEREFORE, THE PARTIES TO THIS AMENDED AND RESTATED ISSUING AND PAYING AGENT AGREEMENT HEREBY AGREE, that in order to secure the payment of the principal of and the interest on all Notes at any time issued, authenticated and delivered hereunder and to provide the terms and conditions under which all property, rights and interests hereby assigned and pledged are to be dealt with and disposed of, and to secure performance and observance of the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and in consideration of the premises and of the material covenants herein contained and of the purchase and acceptance of the Notes by the Owners thereof, and for other valuable consideration, the receipt of which is hereby acknowledged, the City does hereby agree and covenant with the Issuing and Paying Agent for the benefit of the respective Owners, from time to time, of the Notes, or any part thereof, and each Bank, as follows:

ARTICLE I

EQUALITY OF SECURITY; DEFINITIONS; CONTENT OF CERTIFICATES AND OPINIONS

SECTION 1.01. Equality of Security. In consideration of the acceptance of the Notes by the Owners thereof from time to time, this Issuing and Paying Agent Agreement shall be deemed to be and shall constitute a contract among the City, the Issuing and Paying Agent and the Owners (as defined herein) from time to time of the Notes and the covenants and agreements herein set forth to be performed by or on behalf of the City or the Issuing and Paying Agent shall be for the equal and proportionate benefit, security and protection of the Banks and all Owners of the Notes, without preference, priority or distinction as to security or otherwise of any of the Notes over any of the others by reasons of the series, time of issue, sale or negotiation thereof or for any cause whatsoever, except as expressly provided therein or herein. Nothing herein shall prevent additional security being provided to particular Notes under any Supplement (as defined herein).

SECTION 1.02. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Issuing and Paying Agent Agreement and of any Supplement and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Unless otherwise defined in this Issuing and Paying Agent Agreement, all terms used herein shall have the meanings assigned to such terms in the Master Bond Resolution.

Advice

"Advice" means a notice or a written instrument executed by the Issuing and Paying Agent and delivered to the Depository which specifies the amount by which the indebtedness evidenced by a Master Note is to be increased or decreased on any particular date, and such other information as may be required pursuant to the systems and procedures of the Depository applicable to implementation of its book-entry program for obligations of the character of the Notes.

Alternate Facility

"Alternate Facility" means a credit facility provided pursuant to the provisions of Section 6.10 and the instruments pursuant to which such facility is provided.

AMT Costs

"AMT Costs" means the costs of the Project (and the allocable share of Costs of Issuance) which are eligible to be financed with the proceeds of AMT Bonds, as defined in the Tax Certificate, but which are not eligible to be financed with the proceeds of Governmental Bonds, as defined in the Tax Certificate.

AMT Account

"AMT Account" means the account by that name established within the Note Proceeds Fund pursuant to Section 4.01.

AMT Subaccount

"AMT Subaccount" means the subaccount by that name established within the Operating Account pursuant to Section 3.02.

Authorized Airport Representative

"Authorized Airport Representative" means the following officers of the City: Director of Aviation, Deputy Director of Aviation, Finance and Administration, Assistant Director of Aviation or any other person designated to complete and deliver Issuance Requests, in each case who has been identified in a Certificate of the City delivered to the Issuing and Paying Agent and whose signature has likewise been certified to the Issuing and Paying Agent.

Authorized Finance Representative

"Authorized Finance Representative" means the following officers of the City: the Director of Finance, Assistant Director of Finance, Treasury Division Manager, Debt Administrator, City Clerk or City Manager or any other person designated to complete and deliver Issuance Requests, in each case who has been identified in a Certificate of the City delivered to the Issuing and Paying Agent and whose signature has likewise been certified to the Issuing and Paying Agent.

Authorized Representative

"Authorized Representative" means an Authorized Finance Representative, provided that in connection with the completion and delivery of Issuance Requests, "Authorized Representative" means both an Authorized Finance Representative and an Authorized Airport Representative.

Available Amount

"Available Amount" means, with respect to a Letter of Credit and all Notes of any Series secured thereby, the aggregate initial amount available to be drawn on the Letter of Credit as set forth therein, as such amount may be reduced and/or reinstated pursuant to the terms thereof, including as such amounts may be reduced by the amount of Term Loans or Unreimbursed Drawings outstanding.

Bank

"Bank" means the provider of a letter of credit or Alternate Facility securing a Series or multiple Series of Notes and initially means (a) the banks that are parties to the First Reimbursement Agreement and (b) Lloyds TSB Bank plc, acting through its New York Branch, and any other banks that become party to the Second Reimbursement Agreement.

Bond Counsel

"Bond Counsel" means Orrick, Herrington & Sutcliffe LLP or such other firm of national standing in the field of public finance selected by the City.

Business Day

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) a day on which banks located in the State of New York or State of California are required or authorized by law or executive order to be closed, (iii) a day on which the New York Stock Exchange is closed, or (iv) any day which is a day on which commercial banks in the city at which drawing requests under the Letter of Credit are to be presented are required or authorized to close.

Certificate, Statement, Request, Requisition or Order of the City

"Certificate," "Statement," "Request," "Requisition" and "Order" of the City mean, respectively, a written certificate, statement, request, requisition or order signed in the name of the City by an Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument. If and to the extent required by Section 1.03, each such instrument shall include the statements provided for in Section 1.03.

Certificate Agreement

"Certificate Agreement" shall have the meaning given to that term in Section 2.08 hereof.

City

"City" means the City of San José, a municipal corporation duly organized and existing under its charter and the Constitution of the State.

Code

"Code" means the Internal Revenue Code of 1986, and the regulations applicable thereto or issued thereunder.

Corporate Trust Office

"Corporate Trust Office" or "corporate trust office" means the corporate trust office of the Issuing and Paying Agent at 60 Wall Street, New York, NY 10005, or such other or additional offices as may be designated by the Issuing and Paying Agent.

Costs of Issuance

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, execution, sale and delivery of the Notes, including but not limited to advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, travel expenses and costs relating to rating agency meetings and other meetings concerning the Notes, initial fees and charges of the Issuing and Paying Agent, legal fees and charges, fees and disbursements of consultants and professionals, including fees of the Dealer, financial advisor fees and expenses, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of Notes, surety insurance, liquidity and credit enhancements costs, including, without limitation, fees and expenses payable to a Bank under the Reimbursement Agreement, and any other cost, charge or fee in connection with the delivery of Notes.

Council

"Council" means the City Council of the City.

Dealer

"Dealer" means, as applicable, Citigroup Global Markets Inc., Barclays Capital Inc. (as successor to Lehman Brothers Inc.), Morgan Stanley & Co. Incorporated and any successor or assigns permitted under the applicable Dealer Agreement and any other dealer for the Notes or for any Series thereof that is appointed by the City and that has entered into a Dealer Agreement.

Dealer Agreement

"Dealer Agreement" means, as applicable (a) the Dealer Agreements, by and between the City and Morgan Stanley & Co. Incorporated, and any and all modifications, alterations, amendments and supplements thereto, (b) the Dealer Agreements, by and between the City and Citigroup Global Markets Inc., and any and all modifications, alterations, amendments and supplements thereto, (c) the Dealer Agreements, by and between the City and Barclays Capital Inc. (as successor to Lehman Brothers Inc.), and any and all modifications, alterations, amendments and supplements thereto and (d) any other dealer agreement entered into

by the City and a commercial paper dealer with respect to Notes and any alterations, amendments and supplements thereto.

Debt Service Fund

“Debt Service Fund” means the fund by that name established pursuant to Section 5.02(a)(1).

Depository

“Depository” means (i) initially, DTC, and (ii) any other qualified securities depository acting as Depository pursuant to Section 2.08 of this Issuing and Paying Agent Agreement.

Depository System Participant

“Depository System Participant” means any participant in the Depository’s book-entry system.

DTC

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

Event of Default

“Event of Default” means any of the events specified in Section 7.01.

First Bank Account

“First Bank Account” means the account by that name established in the Reimbursement Fund pursuant to Section 3.02(1).

First Reimbursement Agreement

“First Reimbursement Agreement” means the Second Amended and Restated Letter of Credit and Reimbursement Agreement, dated as of December 1, 2007, among the City, JPMorgan Chase Bank, National Association, individually and as agent, and the other banks that become parties thereto, and any amendments thereof and supplements thereto permitted thereby.

Fiscal Year

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period hereafter selected and designated as the official fiscal year period of the City which designation shall be provided to the Issuing and Paying Agent in a Certificate of the City.

Fitch

"Fitch" means Fitch Ratings, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, Fitch shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

Governmental Costs

"Governmental Costs" means costs of the Project (and the allocable share of Costs of Issuance) which are eligible to be financed with the proceeds of Governmental Bonds, as defined in the Tax Certificate.

Governmental Account

"Governmental Account" means the account by that name established within the Note Proceeds Fund pursuant to Section 4.01.

Governmental Subaccount

"Governmental Subaccount" means the subaccount by that name established within the Operating Account pursuant to Section 3.02.

Holder

See "Owner".

Issuance Request

"Issuance Request" means a request made by the City, acting through an Authorized Representative, to the Issuing and Paying Agent for the authentication and delivery of a Note or Notes, a form of which request is attached hereto as Exhibit C.

Issuing and Paying Agent

"Issuing and Paying Agent" means Deutsche Bank Trust Company Americas, a New York State chartered bank, or its successor, as Issuing and Paying Agent, as provided in Section 8.01.

Issuing and Paying Agent Agreement

"Issuing and Paying Agent Agreement" means this Amended and Restated Issuing and Paying Agent Agreement, dated as of September 1, 2009, by and between the Issuing and Paying Agent and the City, as originally executed or as it may from time to time be supplemented or amended by any Supplement delivered pursuant to the provisions of Section 9.01 hereof.

Letter of Credit

“Letter of Credit” means, with respect to Notes of a Series, an irrevocable, direct-pay letter of credit securing payment of the Notes of such Series, and any substitution therefor, including any Alternate Facility, and including in particular the Series A/B Letter of Credit (as defined in the First Reimbursement Agreement), the Series C Letter of Credit (as defined under the First Reimbursement Agreement) and any other Letters of Credit issued by the applicable Banks pursuant to the First Reimbursement Agreement and any Letters of Credit issued by the Bank pursuant to the Second Reimbursement Agreement.

Letter of Credit Expiration Date

“Letter of Credit Expiration Date” means, with respect to a Letter of Credit, the stated expiration date thereof, taking into account any extension of such stated expiration date.

Letter of Credit Fund

“Letter of Credit Fund” means the fund by that name established pursuant to Section 5.03.

Letter of Representations

“Letter of Representations” means a letter to the Depository from the City representing such matters as shall be necessary to qualify the Notes for the Depository’s book-entry system.

Master Bond Resolution

“Master Bond Resolution” has the meaning set forth in the recitals hereto.

Master Note

“Master Note” means a Note substantially in the form attached hereto as Exhibit B.

Moody’s

“Moody’s” means Moody’s Investors Service Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

Nominee

“Nominee” means (i) initially, Cede & Co., as nominee of DTC, and (ii) such other nominee of a Depository designated pursuant to Section 2.08 of this Issuing and Paying Agent Agreement.

Non-AMT Private Activity Account

“Non-AMT Private Activity Account” means the account by that name established within the Note Proceeds Fund pursuant to Section 4.01.

Non-AMT Private Activity Subaccount

“Non-AMT Private Activity Subaccount” means the subaccount by that name established within the Operating Account pursuant to Section 3.02.

Noteholder, Noteowner

See “Owner”.

Note Proceeds Fund

“Note Proceeds Fund” means the fund (and all accounts within such fund) by that name established by the City pursuant to Section 4.01 to hold the proceeds of the Notes prior to expenditure on the Project.

Note Repayment Fund

“Note Repayment Fund” means the Note Repayment Fund established pursuant to Section 5.01.

Notes

“Notes” means the City’s San José International Airport Subordinated Commercial Paper Notes authorized by, and at any time Outstanding pursuant to, this Issuing and Paying Agent Agreement.

Operating Account

“Operating Account” means the account by that name established pursuant to Section 3.02.

Opinion of Bond Counsel

“Opinion of Bond Counsel” means a written opinion of Bond Counsel.

Order of the City

See “Certificate”.

Original Agreement

“Original Agreement” means the Issuing and Paying Agent Agreement between the City of San José and Deutsche Bank Trust Company Americas, successor to U.S. Bank Trust National Association, dated as of November 1, 1999, as supplemented.

Original Issue Notes

“Original Issue Notes” has the meaning given to that term in the Tax Certificate.

Original Series D Notes

“Original Series D Notes” means Notes designated “Series D” and authorized to be issued as non-AMT Notes hereunder pursuant to Section 2.01(b)(v).

Outstanding

“Outstanding,” when used as of any particular time with reference to Notes, means (subject to the provisions of Section 11.10) all Notes theretofore, or thereupon being, authenticated and delivered by the Issuing and Paying Agent under this Issuing and Paying Agent Agreement except (1) Notes theretofore canceled by the Issuing and Paying Agent or surrendered to the Issuing and Paying Agent for cancellation; (2) Notes with respect to which all liability of the City shall have been discharged in accordance with Section 10.02, including Notes (or portions of Notes) referred to in Section 11.10; and (3) Notes for the transfer or exchange of or in lieu of or in substitution for which other Notes shall have been authenticated and delivered by the Issuing and Paying Agent pursuant to this Issuing and Paying Agent Agreement.

Owner or Holder or Noteholder or Noteowner

“Owner” or “Holder” or “Noteholder” or “Noteowner”, whenever used herein with respect to a Note, means the person in whose name such Note is registered.

Parity Debt

“Parity Debt” means all Payment Obligations and any indebtedness or other obligation of the City for borrowed money or interest rate swap agreement, in each case having an equal lien and charge upon the Surplus Revenues and therefore payable on a parity with the Notes (whether or not any Notes are Outstanding).

Payment Obligations

“Payment Obligations” means all amounts owing to the Bank under the Reimbursement Agreement, including, without limitation, any Term Loans (as defined therein).

Permitted Investments

“Permitted Investments” means any of the following, but only to the extent then permitted by the City’s Investment Policy, as amended from time to time by the Council:

(a) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described under subsection (b) below).

(b) Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

(c) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America:

1. U.S. Export-Import Bank (Eximbank);
2. Farmers Home Administration (FmHA);
3. Federal Financing Bank;
4. Federal Housing Administration Debentures (FHA);
5. General Services Administration;
6. Government National Mortgage Association (GNMA or "Ginnie Mae");
7. U.S. Maritime Administration; and
8. U.S. Department of Housing and Urban Development (HUD).

(d) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies:

1. Federal Home Loan Bank System;
2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac");
3. Federal National Mortgage Association (FNMA or "Fannie Mae");
4. Student Loan Marketing Association (SLMA or "Sallie Mae");
5. Resolution Funding Corp. (REFCORP) obligations; and
6. Farm Credit System.

(e) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and rated "AAAm-G," "AAA-m" or better by Standard & Poor's and the equivalent by Moody's, and including funds for which the Trustee and its affiliates provide investment advisory or other management services.

(f) Certificates of deposit secured at all times by collateral described in subsections (b) or (c) above. Such certificates must be issued by commercial banks, savings and

loan associations or mutual savings banks. The collateral must be held by a third party and the Bondholders must have a perfected first security interest in the collateral.

(g) Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.

(h) Commercial paper rated, at the time of purchase, "Prime-1" by Moody's and "A-1" or better by Standard & Poor's.

(i) Bonds or notes issued by any state or municipality which are rated by Moody's and Standard & Poor's in one of the two highest rating categories assigned by such agencies.

(j) Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by Standard & Poor's.

(k) Pre-refunded Municipal Obligations; and

(l) The Local Agency Investment Fund of the State of California.

Person

"Person" means a corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

Project

"Project" means the acquisition, construction, reconstruction, development, expansion and modification of airport terminal and ancillary facilities to the Norman Y. Mineta San José International Airport, including the named projects and estimated dollar amounts, if any, set forth in the City of San José Airport Master Plan approved on June 10, 1997, as amended.

Rating Agency

"Rating Agency" means each nationally recognized securities rating agency, including Moody's, Standard & Poor's, and Fitch, if the Notes are then rated by such rating agency.

Rating Category

"Rating Category" means (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination

of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

Rebate Fund

“Rebate Fund” means the fund by that name established pursuant to Section 6.07.

Rebate Requirement

“Rebate Requirement” means the Rebate Requirement defined in the Tax Certificate.

Redesignated Series D Notes

“Redesignated Series D Notes” means, collectively, the Series D-1 Notes and the Series D-2 Notes.

Reimbursement Agreement

“Reimbursement Agreement” means (a) the First Reimbursement Agreement, (b) the Second Reimbursement Agreement, and/or (c) any other reimbursement agreement entered into by the City and a Bank in respect of a Letter of Credit or an Alternate Facility.

Reimbursement Agreement Fund

“Reimbursement Agreement Fund” means the fund by that name established pursuant to Section 3.02.

Renewal Notes

“Renewal Notes” has the meaning given to that term in the Tax Certificate.

Request, Requisition of the City

See “Certificate”.

Second AMT Account

“Second AMT Account” means the account by that name established within the Note Proceeds Fund pursuant to Section 4.01.

Second AMT Subaccount

“Second AMT Subaccount” means the subaccount by that name established within the Operating Account pursuant to Section 3.02.

Second Bank Account

“Second Bank Account” means the account of that name established in the Reimbursement Agreement Fund pursuant to Section 3.02(2).

Second Governmental Account

“Second Governmental Account” means the account by that name established within the Note Proceeds Fund pursuant to Section 4.01.

Second Governmental Subaccount

“Second Governmental Subaccount” means the subaccount by that name established within the Operating Account pursuant to Section 3.02.

Second Non-AMT Private Activity Account

“Second Non-AMT Private Activity Account” means the account by that name established within the Note Proceeds Fund pursuant to Section 4.01.

Second Non-AMT Private Activity Subaccount

“Second Non-AMT Private Activity Subaccount” means the subaccount by that name established within the Operating Account pursuant to Section 3.02.

Second Reimbursement Agreement

“Second Reimbursement Agreement” means that certain Letter of Credit and Reimbursement Agreement, dated as of May 1, 2008, between the City and Lloyds TSB Bank plc, acting through its New York Branch, as it may be supplemented or amended from time to time.

Second Taxable Account

“Second Taxable Account” means the account by that name established within the Note Proceeds Fund pursuant to Section 4.01.

Second Taxable Subaccount

“Second Taxable Subaccount” means the subaccount by that name established within the Operating Account pursuant to Section 3.02.

Senior Lien Bonds

“Senior Lien Bonds” means bonds, notes and all other obligations issued or incurred under the terms of the Master Bond Resolution and secured, under the terms of the Master Bond Resolution, by a pledge of the Revenues prior to the pledge of Revenues securing the Notes and the Payment Obligations.

Series; Series of Notes

“Series,” or “Series of Notes” whenever used herein with respect to the Notes, means all of the Notes designated as being of the same series, regardless of variations in maturity, interest rate and other provisions.

Series A Notes

“Series A Notes” means, collectively, the Series A-1 Notes and the Series A-2 Notes.

Series A-1 Notes

“Series A-1 Notes” means the Notes of such Series designation authorized to be issued as non-AMT Notes hereunder.

Series A-2 Notes

“Series A-2 Notes” means the Notes of such Series designation authorized to be issued as Private Activity non-AMT Notes hereunder.

Series B Notes

“Series B Notes” means the Notes of such Series designation authorized to be issued as AMT Notes hereunder.

Series C Notes

“Series C Notes” means the Notes of such Series designation created hereunder, the interest with respect to which is not expected to be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986.

Series D Notes

“Series D Notes” means, as applicable, the Original Series D Notes or, after such time as the City complies with the provisions of Section 2.01(e), the Redesignated Series D Notes.

Series D-1 Notes

“Series D-1 Notes” means the Notes of such Series designation authorized to be issued as non-AMT Notes hereunder upon compliance with the provisions of Section 2.01(e).

Series D-2 Notes

“Series D-2 Notes” means the Notes of such Series designation authorized to be issued as Private Activity non-AMT Notes hereunder upon compliance with the provisions of Section 2.01(e).

Series E Notes

"Series E Notes" means the Notes of such Series designation authorized to be issued as AMT Notes hereunder.

Series F Notes

"Series F Notes" means the Notes of such Series designation created hereunder, the interest with respect to which is not expected to be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986.

Standard & Poor's

"Standard & Poor's" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Standard & Poor's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

State

"State" means the State of California.

Statement of the City

See "Certificate of the City".

Stop Order

"Stop Order" means an order to stop issuing Notes delivered to the Issuing and Paying Agent by the Bank pursuant to the Reimbursement Agreement.

Supplement

"Supplement" means any amendment to this Issuing and Paying Agent Agreement hereafter duly executed and delivered, supplementing, modifying or amending this Issuing and Paying Agent Agreement, but only if and to the extent that such Supplement is specifically authorized hereunder.

Surplus Revenues

"Surplus Revenues" means the amount of Revenues required to be deposited in the Surplus Revenue Fund under Section 5.02 of the Master Bond Resolution.

Taxable Costs

“Taxable Costs” means the costs of the Project (and the allocable share of Costs of Issuance) which are not eligible to be financed with the proceeds of either Governmental Bonds or AMT Bonds, as defined in the Tax Certificate.

Taxable Account

“Taxable Account” means the account by that name established within the Note Proceeds Fund pursuant to Section 4.01.

Taxable Notes

“Taxable Notes” means the Series C Notes, the Series F Notes and any other Notes the interest on which is not intended to be excludable from gross income of the holders thereof for federal income tax purposes.

Taxable Subaccount

“Taxable Subaccount” means the subaccount by that name established within the Operating Account pursuant to Section 3.02.

Tax Certificate

“Tax Certificate” means the Tax Certificate delivered by the City at the time of the authorization and initial issuance and delivery of any Series of Notes with respect to which interest is expected to be exempt from taxation under the Code, as the same may be amended or supplemented in accordance with its terms.

Tax-Exempt Notes

“Tax-Exempt Notes” means: (i) the Series A-1 Notes, the Series A-2 Notes, the Series B Notes, the Original Series D Notes and the Series E Notes; (ii) if issued, the Series D-1 Notes and the Series D-2 Notes; and (iii) any other Notes the interest on which is intended to be excludable from gross income of the holders thereof for federal income tax purposes.

Term Loan

“Term Loan” shall have the meaning given such term in the Reimbursement Agreement.

Unreimbursed Drawing

“Unreimbursed Drawing” means each drawing under a Letter of Credit which has not been repaid by the City and has not been converted to a Term Loan.

SECTION 1.03. Content of Certificates and Opinions. Every certificate or opinion provided for in this Issuing and Paying Agent Agreement with respect to compliance

with any provision hereof shall include (1) a statement that the person making or giving such certificate or opinion has read such provision and the definitions herein relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the certificate or opinion is based; (3) a statement that, in the opinion of such person, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion with respect to the subject matter referred to in the instrument to which his signature is affixed; and (4) a statement as to whether, in the opinion of such person, such provision has been complied with.

Any such certificate or opinion made or given by an officer of the City may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel, an accountant, a financial advisor, an investment banker or an independent consultant, unless such officer knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement may be based, as aforesaid, is erroneous. Any such certificate or opinion made or given by counsel, an accountant or an independent consultant may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the City) upon a certificate or opinion of or representation by an officer of the City, unless such counsel, accountant or independent consultant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such person's certificate or opinion or representation may be based, as aforesaid, is erroneous. The same officer of the City, or the same counsel or accountant or independent consultant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Issuing and Paying Agent Agreement, but different officers, counsel, accountants or independent consultants may certify to different matters, respectively.

ARTICLE II

THE NOTES

SECTION 2.01. Authorization of Notes; Supply of Notes. (a) Notes may be issued hereunder, in registered form, from time to time as authorized by this Article. The maximum principal amount of Notes which may be issued hereunder is not limited; subject, however, to any limitations contained in the laws of the State and to the right of the City, which is hereby reserved, to limit the aggregate principal amount of Notes which may be issued or outstanding hereunder. The Notes are designated generally as "The City of San José, San José International Airport Subordinated Commercial Paper Notes"; each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Notes.

(b) (i) A Series of Notes entitled "Series A-1" is hereby authorized to be issued. The Series A-1 Notes shall be issued from time to time as provided herein to finance and refinance Governmental Costs. Proceeds of the Series A-1 Notes may be used to pay maturing Series A-1 Notes and to reimburse the Banks for Unreimbursed Drawings used to pay maturing Series A-1 Notes. Such authorization specifically includes the authorization to issue and reissue Series A-1 Notes for such purposes.

(ii) A Series of Notes entitled "Series A-2" is hereby authorized to be issued. The Series A-2 Notes shall be issued from time to time as provided herein to finance and refinance AMT Costs or Governmental Costs. Proceeds of the Series A-2 Notes may be used to pay maturing Series A-1, Series A-2 or, to the extent permitted in the Tax Certificate, Series B Notes and to reimburse the Banks for Unreimbursed Drawings used to pay maturing Series A-1, Series A-2 or, to the extent permitted in the Tax Certificate, Series B Notes. Such authorization specifically includes the authorization to issue and reissue Series A-2 Notes for such purposes.

(iii) A Series of Notes entitled "Series B" is hereby authorized to be issued. The Series B Notes shall be issued from time to time as provided herein to finance and refinance AMT Costs or Governmental Costs. Proceeds of the Series B Notes may be used to pay maturing Series A-1, Series A-2 or Series B Notes and to reimburse the Banks for Unreimbursed Drawings used to pay maturing Series A-1, Series A-2 or Series B Notes. Such authorization specifically includes the authorization to issue and reissue Series B Notes for such purposes.

(iv) A Series of Notes entitled "Series C" is hereby authorized to be issued. The Series C Notes shall be issued from time to time as provided herein to finance and refinance Taxable Costs, AMT Costs or Governmental Costs. Proceeds of the Series C Notes may be used to pay maturing Series A-1, Series A-2, Series B or Series C Notes and to reimburse the Banks for Unreimbursed Drawings used to pay maturing Series A-1, Series A-2, Series B or Series C Notes. Such authorization specifically includes the authorization to issue and reissue Series C Notes for such purposes.

(v) A Series of Notes entitled "Series D" is hereby authorized to be issued. The Original Series D Notes shall be issued from time to time as provided herein to finance and refinance Governmental Costs. Proceeds of the Original Series D Notes may be used to pay maturing Original Series D Notes and to reimburse the Banks for Unreimbursed Drawings used to pay maturing Original Series D Notes. Proceeds of the Original Series D Notes also may be used to pay maturing Notes of other Series if and to the extent permitted in the Issuing and Paying Agent Agreement, the applicable Reimbursement Agreement and the Tax Certificate and to reimburse the Banks for Unreimbursed Drawings used to pay the applicable maturing Notes. Such authorization specifically includes the authorization to issue and reissue Original Series D Notes for such purposes.

(vi) A Series of Notes entitled "Series E" is hereby authorized to be issued. The Series E Notes shall be issued from time to time as provided herein to finance and refinance AMT Costs or Governmental Costs. Proceeds of the Series E Notes may be used to pay maturing Series D or Series E Notes and to reimburse the Banks for Unreimbursed Drawings used to pay maturing Series D or Series E Notes. Proceeds of the Series E Notes also may be used to pay maturing Notes of other Series if and to the extent permitted in the Issuing and Paying Agent Agreement, the applicable Reimbursement Agreement and the Tax Certificate and to reimburse the Banks for Unreimbursed Drawings used to pay the applicable maturing Notes. Such authorization

specifically includes the authorization to issue and reissue Series E Notes for such purposes.

(vii) A Series of Notes entitled "Series F" is hereby authorized to be issued. The Series F Notes shall be issued from time to time as provided herein to finance and refinance Taxable Costs, AMT Costs or Governmental Costs. Proceeds of the Series F Notes may be used to pay maturing Series D, Series E or Series F Notes and to reimburse the Banks for Unreimbursed Drawings used to pay maturing Series D, Series E or Series F Notes. Proceeds of the Series F Notes also may be used to pay maturing Notes of other Series if and to the extent permitted in the Issuing and Paying Agent Agreement, the applicable Reimbursement Agreement and to reimburse the Banks for Unreimbursed Drawings used to pay the applicable maturing Notes. Such authorization specifically includes the authorization to issue and reissue Series F Notes for such purposes.

(c) The aggregate principal amount of, plus the amount of interest due at maturity on, all Notes of any Series Outstanding hereunder payable from a Letter of Credit shall not at any one time exceed the Available Amount with respect to such Letter of Credit.

(d) The City agrees to furnish the Issuing and Paying Agent with an adequate supply of Notes from time to time, which will be serially numbered and which will have been executed in accordance with Section 2.04, with the principal amount, date of issue, registered Owner, maturity date, interest rate and amount of interest left blank. The Issuing and Paying Agent agrees to hold the Notes in safekeeping for the account of the City in accordance with the customary practice of the Issuing and Paying Agent pending authentication and delivery of Notes pursuant to Section 3.01.

(e) Upon the filing by the City of the following documents with the Bank and the Issuing and Paying Agent:

(i) an Offering Memorandum in connection with the offering of the Redesignated Series D Notes;

(ii) one or more executed Dealer Agreements in connection with the issuance of the Redesignated Series D Notes;

(iii) a Tax Certificate with respect to the issuance from time to time of the Redesignated Series D Notes;

(iv) evidence of the ratings assigned by each Rating Agency to the Redesignated Series D Notes;

(v) either a Certificate of the City to the effect that the Letter of Credit provided pursuant to the Second Reimbursement Agreement secures the payment of the principal and interest component of the Redesignated Series D Notes, or a new Letter of Credit securing the payment of the principal and interest component of the Redesignated Series D Notes together with a copy of the related agreement with the Bank;

(vi) a Certificate of the City stating that no Event of Default has occurred and is then continuing; and that upon the delivery of the Redesignated Series D Notes, the aggregate principal amount of Notes then Outstanding plus the aggregate amount of interest due on all Outstanding Notes at the maturity thereof will not exceed the amount permitted by law or by this Issuing and Paying Agent Agreement.

(vii) an Opinion of Bond Counsel to the effect that the Redesignated Series D Notes, when duly executed by the City and authenticated and delivered by the Issuing and Paying Agent, will be valid and binding obligations of the City; and

(viii) any other documents, certificates or opinions included in the transcript of the proceedings providing for the initial issuance of the Redesignated Series D Notes;

there shall be authorized to be issued a Series of Notes entitled "Series D-1" and a Series of Notes entitled "Series D-2," and the Series of Notes entitled "Series D" shall no longer be authorized to be issued. The Series D-1 Notes shall be issued from time to time as provided herein to finance and refinance Governmental Costs. Proceeds of the Series D-1 Notes may be used to pay maturing Series D-1 Notes and to reimburse the Banks for Unreimbursed Drawings used to pay maturing Series D-1 Notes. Proceeds of the Series D-1 Notes also may be used to pay maturing Notes of other Series if and to the extent permitted in the Issuing and Paying Agent Agreement, the applicable Reimbursement Agreement and the Tax Certificate and to reimburse the Banks for Unreimbursed Drawings used to pay the applicable maturing Notes. Such authorization specifically includes the authorization to issue and reissue Series D-1 Notes for such purposes. The Series D-2 Notes shall be issued from time to time as provided herein to finance and refinance AMT Costs or Governmental Costs. Proceeds of the Series D-2 Notes may be used to pay maturing Series D-1, Series D-2 or, to the extent permitted in the Tax Certificate, Series E Notes and to reimburse the Banks for Unreimbursed Drawings used to pay maturing Series D-1, Series D-2 or, to the extent permitted in the Tax Certificate, Series E Notes. Proceeds of the Series D-2 Notes also may be used to pay maturing Notes of other Series if and to the extent permitted in the Issuing and Paying Agent Agreement, the applicable Reimbursement Agreement and the Tax Certificate and to reimburse the Banks for Unreimbursed Drawings used to pay the applicable maturing Notes. Such authorization specifically includes the authorization to issue and reissue Series D-2 Notes for such purposes.

SECTION 2.02. Terms of the Notes. (a) The Notes shall be dated the date of their respective authentication and issuance; shall be issued in registered form, registered as designated by the Dealer (subject to Section 2.08); shall be issued in denominations of \$100,000 and in integral multiples of \$1,000 in excess thereof; and interest on the Notes, if any, shall be separately stated by rate and amount on the face of each Note. Notes shall bear interest, if any, from their respective dates, payable on their respective maturity dates.

(b) Except as provided in subsection (f) of this Section, the Notes (i) shall bear interest payable at maturity at a rate not to exceed 12% per annum (calculated on the basis of a year consisting of 365/366 days and actual number of days elapsed), (ii) shall mature not more than 270 days after their respective dates, but in no event later than fifteen days prior to the Letter of Credit Expiration Date of the Letter of Credit issued with respect to such Notes, (iii) shall be sold at a price of not less than the principal amount thereof, and (iv) shall mature on

a Business Day. The stated interest rate, maturity date and other terms of each Note, so long as not inconsistent with the terms of this Issuing and Paying Agent Agreement, shall be determined as provided in Section 3.01 hereof.

(c) The Notes shall not be subject to prepayment prior to maturity.

(d) Within each Series, Notes shall be numbered consecutively from No. 1 upward. The Issuing and Paying Agent may make additional provisions for numbering, including additional prefixes and suffixes, as it may deem appropriate.

(e) The principal of and the interest on the Notes shall be paid in federal or other immediately available funds in such coin or currency of the United States of America as, at the respective times of payment, is legal tender for the payment of public and private debts. The principal of and the interest on the Notes, if any, shall be payable at the Corporate Trust Office of the Issuing and Paying Agent on any Business Day upon which such Notes have become due and payable on or before the close of business on such Business Day provided that such Notes are presented and surrendered on a timely basis. Upon presentation of such a Note to the Issuing and Paying Agent no later than 2:15 p.m. (New York City time) on or after any Business Day upon which such Notes have become due and payable, payment for such Note shall be made by the Issuing and Paying Agent in immediately available funds on such Business Day. If a Note is presented for payment after 2:15 p.m. (New York City time) on such Business Day, payment therefor shall be made by the Issuing and Paying Agent on the next succeeding Business Day without the accrual of additional interest thereon.

(f) Notwithstanding any other provisions of this Section, Taxable Notes may be issued and sold at a price less than the principal amount thereof and may bear interest at a rate in excess of 12% per annum, or be sold at a price yielding to the purchaser an effective interest rate in excess of 12% per annum, as determined by the Authorized Representative of the City at the time any Taxable Notes are issued; and interest, if any, payable on Taxable Notes shall accrue from their respective dates and be payable at maturity, and shall be calculated on the basis of a 360-day year and actual number of days elapsed; provided, however, that in no case shall the total amount due on such Taxable Notes exceed the amount available to be drawn therefor under the applicable Letter of Credit.

SECTION 2.03. Form of Notes. The Notes shall be in the form set forth in Exhibit A hereto, unless otherwise specified in a Supplement. Notwithstanding the foregoing, the City may deliver the Notes in the form of a Master Note representing the Notes of any Series to be issued from time to time, each maturing no later than the date which is fifteen days prior to the Letter of Credit Expiration Date of the Letter of Credit issued with respect to such Notes. Each Master Note may be replaced by a new Master Note having a later maturity date so long as the maturity date thereof does not extend beyond the fifteenth day prior to the Letter of Credit Expiration Date of the Letter of Credit issued with respect to such Notes, as the same may be extended from time to time. Each Master Note shall evidence indebtedness of the City as set forth in the Advices. Each Advice shall have the limitations on Notes set forth in Sections 2.01 and 2.02. The aggregate indebtedness evidenced by the Master Notes of all Series of Notes payable from a Letter of Credit shall at all times equal or be less than the Available Amount under such Letter of Credit. References herein to Notes when a Master Note has been issued

therefor shall refer to the indebtedness under the Master Note or the Advices issued with respect thereto.

SECTION 2.04. Execution of Notes. The Notes shall be executed in the name and on behalf of the City with the facsimile signature of an Authorized Representative and attested by the facsimile signature of the Clerk of the City, except in the case of Master Notes, which shall be executed by the manual signature of an Authorized Representative. In case any of the officers who shall have signed or attested any of the Notes shall cease to be such officer or officers of the City before the Notes so signed or attested shall have been authenticated or delivered by the Issuing and Paying Agent or issued by the City, such Notes may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the City as though those who signed and attested the same had continued to be such officers of the City.

SECTION 2.05. Authentication of Notes. (a) Each Note shall be authenticated by manual signature of the Issuing and Paying Agent who shall, pursuant to the provisions hereof, authenticate and deliver Notes in accordance with the terms of Section 3.01 hereof. Notwithstanding anything to the contrary, the Issuing and Paying Agent shall not authenticate any Note if:

(i) such delivery would result in the principal amount of all Notes of any Series Outstanding hereunder payable from a Letter of Credit, plus the amount of interest due on all such Outstanding Notes at the maturity thereof, being in excess of the Available Amount with respect to such Letter of Credit; or

(ii) would result in the delivery of Tax-Exempt Notes bearing interest at an average rate per annum (calculated on the principal amount of the Notes on the basis of actual days elapsed) to the maturity date of such Notes in excess of 12% per annum, or such higher the maximum rate then permitted by law; or

(iii) the maturity date for such Notes extends beyond 270 days from the respective dates of authentication and issuance of such Notes or beyond fifteen days prior to the Letter of Credit Expiration Date of the Letter of Credit issued with respect to such Notes; or

(iv) the Issuing and Paying Agent shall have actual knowledge or shall have been given written notice that an Event of Default under this Issuing and Paying Agent Agreement (other than an Event of Default described in subsection (e) of Section 7.01) shall have occurred and is continuing, or shall have received written notice from the Bank that an Event of Default described in subsection (e) of Section 7.01 has occurred and is continuing; or

(v) the Issuing and Paying Agent shall have received notice that any Opinion of Bond Counsel delivered regarding the exclusion of interest on the Tax-Exempt Notes from the gross income of the Holders thereof for federal income tax purposes has been or is being withdrawn, which notice shall be concurrently delivered by such Bond Counsel to the City.

(b) Notwithstanding Section 2.01(c) and Section 2.05(a)(i), in the event an Unreimbursed Drawing is outstanding with respect to a Letter of Credit, the Issuing and Paying Agent shall authenticate and deliver a principal amount of Notes secured by such Letter of Credit which, together with the principal plus interest due at maturity on all Outstanding Notes secured by such Letter of Credit exceeds the Available Amount if, upon receipt of the proceeds of such Notes, the Issuing and Paying Agent shall have sufficient funds immediately available, and authorized pursuant to Section 2.01(b) to be used, to reimburse the Bank for any Unreimbursed Drawings equal in the aggregate to the amount by which the Available Amount is exceeded, and the Issuing and Paying Agent shall have received written confirmation from such Bank that upon such reimbursement, the Letter of Credit will be reinstated to an aggregate amount sufficient to pay when due all of the principal and interest on all Notes then Outstanding secured by such Letter of Credit. Upon receipt of the proceeds of such Notes, the Issuing and Paying Agent shall immediately notify the Bank whose Unreimbursed Drawing is outstanding that it is holding such proceeds for the benefit of, and will immediately wire the same to, such Bank, and the Issuing and Paying Agent shall immediately do so.

(c) Only such of the Notes as shall bear thereon a certificate of authentication substantially in the form set forth in Exhibit A hereto, or as set forth in the Supplement creating such Series, manually executed by the Issuing and Paying Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Issuing and Paying Agent Agreement, and such certificate of authentication when manually executed by the Issuing and Paying Agent shall be conclusive evidence that the Notes so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Issuing and Paying Agent Agreement.

(d) The City agrees to furnish, from time to time, the Issuing and Paying Agent with a certificate certifying the incumbency and specimen signatures of Authorized Representatives. Until the Issuing and Paying Agent receives a subsequent incumbency certificate of the City, the Issuing and Paying Agent is entitled to rely on the last such certificate delivered to it for purposes of determining the Authorized Representatives of the City.

SECTION 2.06. Notes Mutilated, Lost, Destroyed or Stolen. If any Note shall become mutilated, the City, at the expense of the Holder of said Note, shall execute and deliver a new Note of like tenor and number in exchange and substitution for the Note so mutilated, but only upon surrender to the City of the Note so mutilated. If any Note shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and, if such evidence be satisfactory to it and the Issuing and Paying Agent and indemnity satisfactory to it shall be given, the City, at the expense of the Owner, shall execute and deliver a new Note of like tenor in lieu of and in substitution for the Note so lost, destroyed or stolen. Neither the City nor the Issuing and Paying Agent shall be required to treat both the original Note and any replacement Note as being Outstanding for the purpose of determining the principal amount of Notes which may be issued hereunder, but both the original and the replacement Note shall be treated as one and the same.

SECTION 2.07. Cancellation of Notes. The Issuing and Paying Agent agrees promptly to cancel the Note(s) presented for payment and return such Notes to the City. Promptly upon the written request of the City, the Issuing and Paying Agent agrees to cancel and

return to the City all unissued Notes in the possession of the Issuing and Paying Agent at the time of such request.

SECTION 2.08. Master Note; Registration of Notes. (a) Original Delivery. (1) Each Series of Notes shall be initially delivered in the form of a Master Note registered in the name of the Depository or its Nominee, or any successor or assignee.

(2) The Issuing and Paying Agent shall maintain such books, records and accounts as may be necessary to evidence the obligations of the City resulting from each Master Note and each Advice delivered by the Issuing and Paying Agent, the principal amounts owing thereunder, the maturity schedule therefor, the respective rates of interest thereon and the principal and interest paid from time to time thereunder. In any legal action or proceeding in respect of either Master Note, the entries made in such books, records or accounts shall be, absent manifest error, conclusive evidence of the existence and the amounts of the obligations of the City therein recorded.

(3) The Issuing and Paying Agent may treat and consider the person in whose name each Note is registered as the absolute Owner of such Note for the purpose of payment of principal and interest on such Note, for the purpose of giving notices and other matters with respect to such Note, for the purpose of registering transfers of ownership of such Note, and for all other purposes whatsoever. The Issuing and Paying Agent shall pay the principal of and the interest on the Notes only to the respective Owners of the Notes or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest on the Notes to the extent of the sum or sums so paid. No person other than the Owner of a Note shall receive a Note evidencing the obligation of the City to make payments of principal and interest pursuant to this Issuing and Paying Agent Agreement.

(b) Certificate Agreement and Letter of Representations. The Issuing and Paying Agent has executed and delivered to DTC a commercial paper certificate agreement ("Certificate Agreement") dated June 22, 1994, and the City has been, and the Issuing and Paying Agent is hereby, authorized and directed to execute and deliver to DTC a Letter of Representations substantially in the form provided by DTC in order to provide for the issuance of the Master Notes and the Advices relating thereto and to qualify for the Depository's book-entry only system. Notwithstanding any other provision of this Issuing and Paying Agent Agreement and so long as all outstanding Notes are registered in the name of Cede & Co. as nominee of DTC or its registered assigns, the City and the Issuing and Paying Agent shall cooperate with DTC, as sole registered Owner of the Notes, and its registered assigns, in effecting payment of the principal of and interest on the Notes by arranging for payment in such manner that funds for such payment are properly identified and are made available on the date they are due, all in accordance with the Letter of Representations, the provisions of which the Issuing and Paying Agent may rely upon to implement the foregoing procedures notwithstanding any inconsistent provisions herein. Notwithstanding the effectiveness of the Letter of Representations and a book-entry system with respect to the Notes, the Issuing and Paying Agent shall (i) furnish to the Bank a copy of each notice or other communication provided or required to be provided to Owners pursuant to this Issuing and Paying Agent Agreement, and (ii) ensure that amounts

drawn under each Letter of Credit are applied in accordance with the provisions of this Issuing and Paying Agent Agreement.

(c) Transfers Outside Book-Entry System. (1) In the event that either (i) the Depository determines not to continue to act as Depository for a Series of Notes, or (ii) the City determines to terminate the Depository as such, then the City shall thereupon discontinue the book-entry system with such Depository with respect to such Series of Notes. In such event, the Depository shall cooperate with the City and the Issuing and Paying Agent in the issuance of replacement Notes by providing the Issuing and Paying Agent with a list showing the interests of the Depository System Participants in such Series of Notes and by surrendering such Notes registered in the name of the Nominee to the Issuing and Paying Agent on or before the date such replacement Notes are to be issued. The Depository by accepting delivery of such Notes, agrees to be bound by the provisions of this subsection 2.08(c). If, prior to the termination of the Depository acting as such, the City fails to identify another qualified securities depository to replace the Depository, then the Notes shall no longer be required to be re-registered in the name of the Nominee, but shall be re-registered in whatever name or names the Owners of the Notes transferring or exchanging Notes shall designate, in accordance with the provisions of this Section 2.08.

(2) In the event the City determines that it is in the best interests of the beneficial owners of a Series of Notes that they be able to obtain certificated Notes, the City may notify the Depository System Participants of the availability of such certificated Notes through the Depository. In such event the Issuing and Paying Agent will issue, transfer and exchange Notes as required by the Depository and others in appropriate amounts, and whenever the Depository in taking appropriate action (i) to make available one or more separate certificates evidencing such Series of Notes to any Depository System Participant having such Notes credited to its account with the Depository, or (ii) to arrange for another qualified securities depository to maintain custody of a single certificate evidencing such Series of Notes, all at the City's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Issuing and Paying Agent Agreement to the contrary, so long as Notes of a Series are issued in the form of the Master Notes, all payments with respect to principal of and interest on such Notes and all notices with respect to such Notes shall be made and given, respectively, as provided in the Letter of Representations described in subsection 2.08(b) or as otherwise instructed in writing by the Depository.

(e) Registration of Notes. (1) Any Note may, in accordance with its terms, be transferred, upon the register required to be kept pursuant to the provisions of this Section by the person in whose name it is registered, in person or by such person's duly authorized attorney, upon surrender of such Note for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Issuing and Paying Agent.

(2) Whenever any Note or Notes shall be surrendered for transfer, the City shall execute and the Issuing and Paying Agent shall authenticate and deliver a new Note or Notes, of the same tenor, maturity and interest rate and for a like aggregate principal amount. The Issuing and Paying Agent shall require the Owner of the Note

requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

(3) The Issuing and Paying Agent will keep or cause to be kept at its corporate trust office sufficient books for the registration and transfer of Notes, which shall at all times be open to inspection during normal business hours by the City upon reasonable prior notice, and upon presentation for such purpose, the Issuing and Paying Agent shall, under reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred on such books the Notes, as herein provided.

ARTICLE III

ISSUE AND SALE OF NOTES

SECTION 3.01. Issuance and Sale of Notes. (a) Except as provided in subsection (b) of this Section, whenever an Authorized Representative determines that the City shall sell or issue Notes, such Authorized Representative shall deliver an Issuance Request to the Issuing and Paying Agent prescribing the terms of such Notes and the sale or issuance thereof in accordance with Section 2.02. Each Issuance Request and each issuance of Notes pursuant to this Section 3.01 shall certify or constitute a representation and warranty that:

(1) all action on the part of the City necessary for the valid issuance of the Notes then to be issued has been taken and has not been rescinded or revoked;

(2) such Notes in the hands of the Owners thereof will be valid and binding obligations of the City according to their terms.

(3) no Event of Default under Section 7.01 has occurred and is continuing as of the date of issuance of such Notes; and

(4) the City is in compliance with the covenants set forth in Article VI hereof, and except in the case of the Taxable Notes, including without limitation, the tax covenants contained in Section 6.07 and 6.08 and the Tax Certificate, as of the date of issuance of such Notes.

(b) Notwithstanding the first sentence of subsection (a) of this Section, in the event that an Authorized Representative has not delivered an Issuance Request on the maturity date of any Outstanding Note, the Issuing and Paying Agent shall authenticate and deliver an additional Note or Notes in aggregate principal amount equal to the aggregate principal amount of Notes maturing on such date and issued to refund such Notes, such additional Note or Notes to be delivered to or upon the order of the Dealer against receipt of the purchase price thereof from time to time. No Issuance Request shall be required for Notes authenticated and delivered pursuant to this subsection (b).

(c) So long as any Master Note is held by the Depository as provided in Section 2.08, the Issuing and Paying Agent shall deliver Notes thereunder in accordance with the terms of the Letter of Representations and the Certificate Agreement.

(d) Each Issuance Request will be given by an Authorized Representative by telephone, promptly confirmed in writing (which writing may be transmitted by fax). The Issuing and Paying Agent shall incur no liability to the City in acting hereunder upon telephonic or other instructions contemplated hereby which the recipient thereof believed in good faith to have been given by an Authorized Representative. In the event a discrepancy exists between the telephonic instructions and the written confirmation, or in the absence of receiving a written confirmation, the telephonic instructions as transcribed and understood by the Issuing and Paying Agent will be deemed the controlling and proper instructions.

Upon receipt of an Issuance Request, the Issuing and Paying Agent shall authenticate and deliver the Notes to the Dealer for the consideration and in the manner hereinafter provided, but only if the Issuing and Paying Agent shall have received such Issuance Request no later than 12:30 p.m. (New York City time) on the Business Day on which such Notes are to be delivered. If an Issuance Request is received after 12:30 p.m. (New York City time) on a given day, the Issuing and Paying Agent shall not be obligated to deliver the requested Notes until the next succeeding Business Day. In the case of book-entry Notes; the time provided above shall instead be 1:00 p.m. (New York City time). On the maturity date of an Outstanding Note or Notes as described in subsection (b) of this Section, or upon receipt of an Issuance Request as described in this subsection (d), and except as provided in subsection (c) of this Section, the Issuing and Paying Agent agrees to withdraw the necessary Note(s) from safekeeping and agrees to:

(1) complete each Note as to principal amount (in denominations as prescribed by Section 2.02(a)), date of issue, maturity date, interest rate and amount of interest thereon (or, in the case of Taxable Notes issued at a price below the principal amount thereof, initial amount and value at maturity) and to register such Note as directed by Dealer, unless it has received express instructions as to registration from the Dealer;

(2) manually authenticate each Note by any officer or employee duly authorized and designated for such purpose;

(3) deliver the Note(s) to or upon the order of the Dealer or its agent within the Borough of Manhattan, south of Chambers Street, City and State of New York, which delivery shall be against receipt for payment as herein provided or as otherwise provided in an Issuance Request (if such Issuance Request does not provide for such receipt, the Dealer shall nevertheless pay the purchase price for the Note(s) in accordance with subsection (e) hereof); and

(4) retain one (1) of the nonnegotiable copies of each Note for its records and promptly forward one (1) nonnegotiable copy of each Note to the City and the Bank.

(e) The City understands that although the Issuing and Paying Agent has been instructed and has agreed to deliver the Notes against payment, in accordance with the custom prevailing in the commercial paper market, delivery of the Notes will be made before receipt of payment in immediately available funds. Therefore, once the Issuing and Paying Agent has

delivered a Note to the Dealer or its agent, as provided in subsection (d)(3) of this Section, the City agrees to bear the risk that the Dealer or its agent shall fail to remit payment for the Note to the Issuing and Paying Agent. The Issuing and Paying Agent shall have no liability to the City for any failure or inability on the part of the Dealer to make payment for the Notes. It is understood that each delivery of Notes hereunder shall be subject to the rules of the New York Clearing House in effect at the time of such delivery and, in accordance therewith, Notes are to be delivered by 2:15 p.m. (New York City time).

(f) Notwithstanding any other provision of this Issuing and Paying Agent Agreement to the contrary, no such Notes shall be delivered by the Issuing and Paying Agent if the delivery of such Notes would result in violation of any of the prohibitions respecting authentication of Notes set forth in Section 2.05. If the Issuing and Paying Agent is unable to comply with an Issuance Request or the provisions of subsection (b) of this Section, the Issuing and Paying Agent shall immediately notify the City and the Dealer of the circumstances prohibiting the issuance of the Notes.

(g) Notwithstanding any other provision hereof, if a Stop Order has been delivered and has not been withdrawn, the Issuing and Paying Agent shall not issue or authenticate any Notes hereunder which are affected by such Stop Order, except to effect transfers or exchanges of Outstanding Notes as provided in Section 2.06 and Section 2.07. In the event that issuance of Notes, whether pursuant to an Issuance Request or pursuant to subsection (b) of this Section, would violate a Stop Order, the Issuing and Paying Agent shall provide the City with a copy of the Stop Order, and shall notify the Dealer and the City that it is not permitted to issue or authenticate any Notes hereunder while such Stop Order remains effective.

SECTION 3.02. Proceeds of Sale of Notes. Upon receipt from the Dealer, the Issuing and Paying Agent shall deposit all moneys representing proceeds of the Notes in one of the following subaccounts within an Operating Account, which account and subaccounts the Issuing and Paying Agent shall establish and maintain: the Governmental Subaccount, the Non-AMT Private Activity Subaccount, the AMT Subaccount, the Taxable Subaccount, the Second Governmental Subaccount, the Second Non-AMT Private Activity Subaccount, the Second AMT Subaccount and the Second Taxable Subaccount. The Issuing and Paying Agent shall apply amounts in the subaccounts within the Operating Account to the credit of the following funds and accounts in the following order of priority:

- (1) To the First Bank Account within the Reimbursement Agreement Fund, which the Issuing and Paying Agent shall establish and maintain, to the extent required to reimburse the applicable Banks for Unreimbursed Drawings as follows: (a) amounts received from the proceeds of the Series A-1 Notes shall be deposited in the Governmental Subaccount and shall be applied to reimburse the Banks for Unreimbursed Drawings with respect to payments of principal and/or interest on maturing Series A-1 Notes, as directed by the City; (b) amounts received from the proceeds of the Series A-2 Notes shall be deposited in the Non-AMT Private Activity Subaccount and shall be applied to reimburse the Banks for Unreimbursed Drawings with respect to payments of principal and/or interest on maturing Series A-1, Series A-2 or Series B Notes, as directed by the City; (c) amounts received from the proceeds of Series B Notes shall be deposited

in the AMT Subaccount and shall be applied to reimburse the Banks for Unreimbursed Drawings with respect to payments of principal and/or interest on the maturing Series A-1, Series A-2 or Series B Notes, as directed by the City; and (d) amounts received from the proceeds of Series C Notes shall be deposited in the Taxable Subaccount and shall be applied to reimburse the Banks for Unreimbursed Drawings with respect to payments of principal and/or interest on maturing Series A-1, Series A-2, Series B or Series C Notes, as directed by the City; and

(2) To the Second Bank Account within the Reimbursement Agreement Fund, which the Issuing and Paying Agent shall establish and maintain, (a) amounts received from the proceeds of the Original Series D Notes or the Series D-1 Notes, as applicable, shall be deposited in the Second Governmental Subaccount and shall be applied to reimburse the applicable Bank for Unreimbursed Drawings with respect to payments of principal and/or interest on maturing Original Series D Notes or Series D-1 Notes, as applicable, as directed by the City; (b) amounts received from the proceeds of the Series D-2 Notes shall be deposited in the Second Non-AMT Private Activity Subaccount and shall be applied to reimburse the applicable Bank for Unreimbursed Drawings with respect to payments of principal and/or interest on maturing Series D-1, Series D-2 or Series E Notes, as directed by the City; (c) amounts received from the proceeds of Series E Notes shall be deposited in the Second AMT Subaccount and shall be applied to reimburse the applicable Bank for Unreimbursed Drawings with respect to payments of principal and/or interest on the maturing Series D or Series E Notes, as directed by the City; and (d) amounts received from the proceeds of Series F Notes shall be deposited in the Second Taxable Subaccount and shall be applied to reimburse the applicable Bank for Unreimbursed Drawings with respect to payments of principal and/or interest on maturing Series D, Series E or Series F Notes, as directed by the City; and

(3) To the City for deposit in the Note Proceeds Fund established pursuant to Section 4.01, to the extent of any remaining proceeds; provided that if proceeds are to be applied to refund outstanding indebtedness other than Notes, the City may elect to direct the Issuing and Paying Agent to transfer such proceeds directly to the trustee or escrow agent for the indebtedness being refunded.

Amounts transferred from the Governmental Account pursuant to Section 4.01(b) or Surplus Revenues transferred to the First Bank Account in the Reimbursement Agreement Fund pursuant to Section 5.02(a)(2) shall be deposited in the Governmental Subaccount and shall be applied first, to reimburse the Banks for Unreimbursed Drawings with respect to payments of principal and/or interest on maturing Series A-1 Notes, and second, to the payment at maturity of such Series of Notes.

Amounts transferred from the Non-AMT Private Activity Account pursuant to Section 4.01(b) or Surplus Revenues transferred to the First Bank Account in the Reimbursement Agreement Fund pursuant to Section 5.02(a)(2) shall be deposited in the Non-AMT Private Activity Subaccount and shall be applied first, to reimburse the Banks for Unreimbursed Drawings with respect to payments of principal and/or interest

on maturing Series A-1, Series A-2 or Series B Notes, and second, to the payment at maturity of such Series of Notes.

Amounts transferred from the AMT Account pursuant to Section 4.01(b) or Surplus Revenues transferred to First Bank Account in the Reimbursement Agreement Fund pursuant to Section 5.02(a)(2), shall be deposited in the AMT Subaccount and shall be applied to reimburse the Banks for Unreimbursed Drawings with respect to payments of principal and/or interest on the maturing Series A-1, Series A-2 or Series B Notes, as directed by the City, and second, to the payment at maturity of such Series of Notes.

Amounts transferred from the Taxable Account pursuant to Section 4.01(b) or Surplus Revenues transferred to the First Bank Account in the Reimbursement Agreement Fund pursuant to Section 5.02(a)(2) shall be deposited in the Taxable Subaccount and shall be applied to reimburse the Banks for Unreimbursed Drawings with respect to payments of principal and/or interest on maturing Series A-1, Series A-2, Series B or Series C Notes, as directed by the City; and second, to the payment at maturity of such Series of Notes.

Amounts transferred from the Second Governmental Account pursuant to Section 4.01(b) or Surplus Revenues transferred to the Second Bank Account in the Reimbursement Agreement Fund pursuant to Section 5.02(a)(2) shall be deposited in the Second Governmental Subaccount and shall be applied first, to reimburse the applicable Bank for Unreimbursed Drawings with respect to payments of principal and/or interest on maturing Original Series D Notes or Series D-1 Notes, as applicable, and second, to the payment at maturity of such Series of Notes.

Amounts transferred from the Second Non-AMT Private Activity Account pursuant to Section 4.01(b) or Surplus Revenues transferred to the Second Bank Account in the Reimbursement Agreement Fund pursuant to Section 5.02(a)(2) shall be deposited in the Second Non-AMT Private Activity Subaccount and shall be applied first, to reimburse the Banks for Unreimbursed Drawings with respect to payments of principal and/or interest on maturing Series D or Series E Notes, and second, to the payment at maturity of such Series of Notes.

Amounts transferred from the Second AMT Account pursuant to Section 4.01(b) or Surplus Revenues transferred to the Second Bank Account in the Reimbursement Agreement Fund pursuant to Section 5.02(a)(2), shall be deposited in the Second AMT Subaccount and shall be applied to reimburse the applicable Bank for Unreimbursed Drawings with respect to payments of principal and/or interest on the maturing Series D or Series E Notes, as directed by the City, and second, to the payment at maturity of such Series of Notes.

Amounts transferred from the Second Taxable Account pursuant to Section 4.01(b) or Surplus Revenues transferred to Second Bank Account in the Reimbursement Agreement Fund pursuant to Section 5.02(a)(2) shall be deposited in the Taxable Subaccount and shall be applied to reimburse the applicable Bank for Unreimbursed Drawings with respect to payments of principal and/or interest on

maturing Series D, Series E or Series F Notes, as directed by the City; and second, to the payment at maturity of such Series of Notes.

SECTION 3.03. Issuance of Additional Series of Notes. The City may by Supplement establish one or more additional Series of Notes, payable from Surplus Revenues and secured by the pledge made under this Issuing and Paying Agent Agreement equally and ratably with any other Notes previously issued, and the City may issue, and the Issuing and Paying Agent may authenticate and deliver to the Dealer (except as provided in Section 3.01(f)), Notes of any Series so established, in such principal amount as shall be determined by the City, but only, with respect to each such additional Series of Notes issued hereunder after the Series A, Series B, Series C, Series D, Series E and Series F Notes, upon compliance by the City with the provisions of Section 3.04 and Section 3.05 and any additional requirements set forth in said Supplement and subject to the following specific conditions, which are hereby made conditions precedent to the issuance of any such additional Series of Notes:

- (a) No Event of Default shall have occurred and then be continuing.
- (b) The aggregate principal amount of Notes authorized to be issued hereunder plus the aggregate amount of interest due on all Outstanding Notes at the maturity thereof together with all outstanding Parity Debt shall not in combination with all outstanding debt obligations of the City exceed any limitation imposed by law or by any Supplement.
- (c) The City shall have obtained and placed on file with the Issuing and Paying Agent a Letter of Credit (or amendment to an existing Letter of Credit) securing the payment of the principal of and interest component of the additional Series of Notes.
- (d) The City shall certify that all of the requirements for the issuance of such additional Series of Notes contained in the Reimbursement Agreement have been met.
- (e) The City shall furnish to the Issuing and Paying Agent written evidence from each Rating Agency, in each case to the effect that such Rating Agency has reviewed the proposed Supplement and that the issuance of the additional Series of Notes will not, by itself, result in a reduction or withdrawal of its rating of the Notes which then prevails.

Nothing in this Section or in this Issuing and Paying Agent Agreement shall prevent or be construed to prevent the Supplement providing for the issuance of an additional Series of Notes from pledging or otherwise providing, in addition to the security given or intended to be given by this Issuing and Paying Agent Agreement, additional security for the benefit of such additional Series of Notes or any portion thereof.

SECTION 3.04. Proceedings for Issuance of Additional Series of Notes. Whenever the City shall determine to issue an additional Series of Notes pursuant to Section 3.03, the City shall authorize the execution of a Supplement specifying the aggregate principal amount, and prescribing the forms of Notes of such additional Series and providing the terms, conditions, distinctive designation, denominations, liquidity or credit facility to be provided with respect to such Notes and any other provisions respecting the Notes of such Series not inconsistent with the terms of this Issuing and Paying Agent Agreement.

Before such additional Series of Notes shall be issued and delivered, the City shall file the following documents with the Bank and the Issuing and Paying Agent (upon which documents the Issuing and Paying Agent may conclusively rely in determining whether the conditions precedent to the issuance of such Series of Notes have been satisfied):

(a) An executed copy of the Supplement authorizing such Series.

(b) An executed copy of the Dealer Agreement and the agreement providing a Letter of Credit or Alternate Facility executed in connection with the issuance and delivery of such additional Series of Notes.

(c) A Certificate of the City stating that no Event of Default has occurred and is then continuing; and that upon the delivery of such Series the aggregate principal amount of Notes then Outstanding plus the aggregate amount of interest due on all Outstanding Notes at the maturity thereof will not exceed the amount permitted by law or by this Issuing and Paying Agent Agreement.

(d) An Opinion of Bond Counsel to the effect that the execution of the Supplement has been duly authorized by the City in accordance with this Issuing and Paying Agent Agreement; and that such Series of Notes, when duly executed by the City and authenticated and delivered by the Issuing and Paying Agent, will be valid and binding obligations of the City.

(e) A Letter of Credit meeting the requirement of Section 3.03(c).

SECTION 3.05. Limitations on the Issuance of Obligations Payable from Surplus Revenues. The City will not, so long as any of the Notes, Payment Obligations or Letters of Credit are outstanding, issue any obligations or securities, howsoever denominated, payable in whole or in part from or secured by Surplus Revenues, except the following:

(a) Notes of any additional Series authorized pursuant to Sections 3.03 and 3.04.

(b) Parity Debt, provided that the following conditions to the issuance of such Parity Debt are satisfied:

(1) Such Parity Debt has been duly and legally authorized;

(2) No Event of Default shall have occurred and then be continuing, as evidenced in a Certificate of the City filed with the Issuing and Paying Agent and the Bank;

(3) The City shall have filed with the Issuing and Paying Agent and the Bank an Opinion of Bond Counsel to the effect that such Parity Debt has been duly authorized in accordance with this Issuing and Paying Agent Agreement and complies with the applicable provisions of the Reimbursement Agreement limiting the issuance of such Parity Debt; and

(4) The City shall deliver to the Issuing and Paying Agent and the Bank a transcript of the proceedings providing for the issuance of such Parity Debt.

(c) Subject to the terms and conditions of the Reimbursement Agreement, obligations which are junior and fully subordinate to the payment of the principal, premium, if any, interest and reserve fund requirements, if any, for the Notes and all Parity Debt, and which junior and subordinate obligations are payable as to principal, premium, if any, interest and reserve fund requirements, if any, only out of Surplus Revenues after the prior payment of all amounts then required to be paid hereunder from Surplus Revenues for principal, premium, if any, interest and reserve fund requirements, if any, for the Notes and all Parity Debt, as the same become due and payable and at the times and in the manner as required in this Issuing and Paying Agent Agreement.

Notwithstanding anything herein to the contrary, the issuances of Notes and any draw on a Letter of Credit with respect to Notes which has not been converted to a Term Loan shall not be considered the issuance of additional debt within the provisions of Sections 3.03 through 3.05, inclusive, and no limitation contained in such Sections shall apply to the issuance of Notes or any such draw on a Letter of Credit with respect thereto.

ARTICLE IV

NOTE PROCEEDS FUND

SECTION 4.01. Establishment and Application of Note Proceeds Fund. (a) (1) The City shall establish, maintain and hold a separate fund designated as the "Note Proceeds Fund." The City shall also establish, maintain and hold within the Note Proceeds Fund six separate accounts designated the "Governmental Account," the "AMT Account," the "Taxable Account," the "Second Governmental Account," the "Second AMT Account" and the "Second Taxable Account.

(2) Amounts transferred to the City by the Issuing and Paying Agent pursuant to Section 3.02(3) from the proceeds of the Series A-1 Notes shall be deposited in the Governmental Account and shall be used exclusively to pay Governmental Costs. Amounts transferred to the City by the Issuing and Paying Agent pursuant to Section 3.02(3) from the proceeds of the Series A-2 Notes shall be deposited in the Non-AMT Private Activity Account and shall be used exclusively to pay AMT Costs and/or Governmental Costs. Amounts transferred to the City by the Issuing and Paying Agent pursuant to Section 3.02(3) from the proceeds of the Series B Notes shall be deposited in the AMT Account and shall be used exclusively to pay AMT Costs and/or Governmental Costs, and amounts transferred to the City by the Issuing and Paying Agent pursuant to Section 3.02(3) from the proceeds of the Series C Notes shall be deposited in the Taxable Account and shall be used to pay Taxable Costs, AMT Costs and/or Governmental Costs.

(3) Amounts transferred to the City by the Issuing and Paying Agent pursuant to Section 3.02(3) from the proceeds of the Original Series D Notes or the Series D-1 Notes, as applicable, shall be deposited in the Second Governmental Account and shall be used exclusively to pay Governmental Costs. Amounts transferred to the

City by the Issuing and Paying Agent pursuant to Section 3.02(3) from the proceeds of the Series D-2 Notes shall be deposited in the Second Governmental Account and shall be used exclusively to pay AMT Costs and/or Governmental Costs. Amounts transferred to the City by the Issuing and Paying Agent pursuant to Section 3.02(3) from the proceeds of the Series E Notes shall be deposited in the Second AMT Account and shall be used exclusively to pay AMT Costs and/or Governmental Costs, and amounts transferred to the City by the Issuing and Paying Agent pursuant to Section 3.02(3) from the proceeds of the Series F Notes shall be deposited in the Second Taxable Account and shall be used to pay Taxable Costs, AMT Costs and/or Governmental Costs.

(4) All investment earnings on funds held within each account in the Note Proceeds Fund shall be retained in each such account unless directed by the City to be deposited in the Rebate Fund.

(b) When the City determines that the portion of the Project to be financed with the proceeds of a Series of Notes has been completed, the City shall transfer the remaining balance in the appropriate account within the Note Proceeds Fund to the Issuing and Paying Agent for deposit in the applicable Account in the Reimbursement Agreement Fund and the Issuing and Paying Agent shall apply such funds as soon as practicable to the payment first, of amounts owing to the Banks with respect to such Series of Notes and second, to the payment at maturity of such Series of Notes; provided that (i) proceeds of the Series A-2 or Series B Notes may also be used to pay amounts owing to the Banks with respect to Series A-1, Series A-2 or Series B Notes, or to pay maturing Series A-1, Series A-2 or Series B Notes, and proceeds of the Series C Notes may also be used to pay amounts owing to the Banks with respect to such Series A-1, Series A-2, Series B or Series C Notes, or to pay maturing Series A-1, Series A-2, Series B or Series C Notes and (ii) proceeds of the Series D-2 and Series E Notes may also be used to pay amounts owing to the applicable Bank with respect to Series D or Series E Notes, or to pay maturing Series D or Series E Notes, and proceeds of Series F Notes may also be used to pay amounts owing to the applicable Bank with respect to Series D, Series E and Series F Notes or to pay maturing Series D, Series E and Series F Notes. If no such amounts are then owing, the balance may be transferred to the City as Surplus Revenues pursuant to Section 5.02(b).

ARTICLE V

SURPLUS REVENUES

SECTION 5.01. Pledge of Surplus Revenues; Note Repayment Fund.

(a) The Notes are limited obligations of the City and are payable as to both principal and interest exclusively from the Surplus Revenues and other funds pledged hereunder. All Surplus Revenues are hereby pledged to secure the payment of the principal of and interest on the Notes and any Payment Obligations in accordance with their terms, subject only to the provisions of this Issuing and Paying Agent Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein. There are hereby pledged to secure the payment of the principal of and interest on the Notes and amounts owed to the Banks for reimbursement of Unreimbursed Drawings and Payment Obligations pursuant to the Reimbursement Agreement, each in accordance with their terms, all amounts held by the Issuing and Paying Agent hereunder (except for amounts held in the Rebate Fund) subject only to the provisions of this Issuing and

Paying Agent Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein. Said pledge shall be valid and binding from and after delivery by the Issuing and Paying Agent of the Notes or Payment Obligations.

Out of Surplus Revenues there shall be applied as hereinafter set forth all sums required for the payment of the principal of, redemption premium, if any, and interest on the Notes and all Parity Debt, together with any sinking fund payments of Parity Debt and reserve fund requirements with respect thereto. All remaining Surplus Revenues, after making the foregoing allocation, shall be available to the City for any purpose for which the City may use Surplus Revenues under the Master Bond Resolution. The pledge of Surplus Revenues herein made shall be irrevocable until all of the Notes and all Payment Obligations are no longer outstanding.

By 1:00 p.m. (New York City time) on the date that any Notes are scheduled to mature, the City agrees that the City shall have provided, or caused to be provided, to the Issuing and Paying Agent, sufficient funds from which to pay the maturing Notes and the interest thereon which shall be paid from the funds provided as set forth in this Article V. When any matured Note is presented to the Issuing and Paying Agent for payment by the holder thereof, payment shall be made from funds held pursuant to the provisions set forth this Article V and in accordance with the terms of such Note.

(b) The Issuing and Paying Agent shall forthwith deposit in a trust fund, designated as the "Note Repayment Fund," which fund the Issuing and Paying Agent shall establish and maintain, all Surplus Revenues paid to the Issuing and Paying Agent by the City, when and as received by the Issuing and Paying Agent. All moneys at any time held in the Note Repayment Fund shall be held in trust for the benefit of the Banks and the Owners of the Notes and Parity Debt including, without limitation, the Banks and shall be disbursed, allocated and applied solely for the uses and purposes set forth in Section 5.02.

SECTION 5.02. Allocation of Surplus Revenues: Debt Service Fund; Reimbursement Agreement Fund. (a) So long as any Notes are Outstanding or any Payment Obligations remain unpaid, on each day that the Issuing and Paying Agent receives Surplus Revenues and on each day that interest on and principal of Notes is due, the Issuing and Paying Agent shall set aside the moneys in the Note Repayment Fund in the following respective funds (each of which the Issuing and Paying Agent shall establish, maintain and hold in trust for the benefit of the Banks and the Owners of the Notes) in the following amounts, in the following order of priority, the requirements of each such fund (including the making up of any deficiencies in any such fund resulting from lack of Surplus Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any fund subsequent in priority; provided that on a parity with such deposits the Issuing and Paying Agent shall set aside or transfer amounts due with respect to outstanding Payment Obligations, as provided in the proceedings for such Parity Debt delivered to the Issuing and Paying Agent pursuant to Section 3.05 hereof:

(1) Debt Service Fund. To the extent that amounts held by the Issuing and Paying Agent are insufficient to pay interest on and principal of the Notes when due because of a failure on the part of a Bank to honor a draw on a Letter of Credit, the

Issuing and Paying Agent shall transfer amounts in the Note Repayment Fund to a special fund designated as the "Debt Service Fund," which the Issuing and Paying Agent shall establish and maintain. The funds in the Debt Service Fund shall be used exclusively for payment of the principal of and interest on the Notes, upon presentation thereof for payment, in accordance with the terms of this Issuing and Paying Agent Agreement;

(2) Reimbursement Agreement Fund. After making the transfer required under subsection (1) above, to the extent that there are any Unreimbursed Drawings outstanding, as shown in a written notice or notices delivered by the applicable Bank to the Issuing and Paying Agent, and to the extent such amounts have not otherwise been transferred to the First Bank Account and/or to the Second Bank Account, as applicable, in the Reimbursement Agreement Fund pursuant to Section 3.02, the Issuing and Paying Agent shall deposit in such Account or Accounts in the Reimbursement Agreement Fund an amount of Surplus Revenues equal to the amount of the outstanding Unreimbursed Drawings so required to be paid. In the event the amount of Surplus Revenues is less than the amount required to be deposited to the First Bank Account and to the Second Bank Account, the amount of Surplus Revenues available shall be allocated by the Issuing and Paying Agent to each Account *pro rata* in accordance with the amount of Unreimbursed Drawings then due to the applicable Bank or Banks. Any notice or written request given by the City to a Bank pursuant to a Reimbursement Agreement requesting the creation of a Term Loan shall be given concurrently to the Issuing and Paying Agent.

(b) Any Surplus Revenues remaining in the Note Repayment Fund after the foregoing transfers described in Subsection (a) above, or in a Supplement, or in an instrument providing for the issuance of debt subordinate to the Notes or Parity Debt, shall either remain on deposit in the Note Repayment Fund or be transferred to the City, as provided in and pursuant to Orders of the City delivered to the Issuing and Paying Agent from time to time. The City may use and apply such Surplus Revenues when received by it for any purpose for which the City may use Surplus Revenues under the Master Bond Resolution.

SECTION 5.03. Draws Under Letters of Credit; Payment of Principal and Interest; Enforcement. The Issuing and Paying Agent shall draw upon each Letter of Credit by the times and in accordance with the terms thereof, in amounts sufficient to pay the interest on and principal of the Notes when due. Pending application as aforesaid, moneys drawn under the Letter of Credit shall be deposited in a special fund designated the "Letter of Credit Fund," which the Issuing and Paying Agent shall establish and maintain. The Issuing and Paying Agent shall hold the funds in the Letter of Credit Fund for the benefit of the holders of the Notes, shall set such funds aside exclusively for the payment of the principal of and interest on the Notes for which the draw on the Letter of Credit was made (and shall create such subaccounts within the Letter of Credit Fund as may be necessary to provide for payment of the Notes of each Series), and shall apply such amounts to the payment of principal of and interest on such Notes, upon presentation thereof for payment, in accordance with the terms of this Issuing and Paying Agent Agreement. The Issuing and Paying Agent shall not have a lien on the Letter of Credit Fund for the payment of any fees or expenses or other obligations owing to the Issuing and Paying Agent

hereunder. Any moneys drawn under a Letter of Credit not needed to pay the interest on and principal of the Notes shall be promptly remitted by the Issuing and Paying Agent to the Bank.

The City hereby directs the Issuing and Paying Agent to diligently enforce all terms, covenants and conditions of the Letters of Credit, including payment when due of any draws on a Letter of Credit, and the provisions thereof relating to the payment of draws on the Letters of Credit and the increase or reinstatement of the Available Amounts, and to refrain from consenting to or agreeing to or permitting any amendment or modification thereof which would materially adversely affect the rights or security of the Holders of the Notes. If at any time during the term of a Letter of Credit any successor Issuing and Paying Agent shall be appointed and qualified under this Issuing and Paying Agent Agreement, the resigning or removed Issuing and Paying Agent shall request that each Bank transfer its Letter of Credit to the successor Issuing and Paying Agent. If the resigning or removed Issuing and Paying Agent fails to make this request, the successor Issuing and Paying Agent shall do so before accepting appointment. When a Letter of Credit expires in accordance with its terms or is replaced by an Alternate Facility, the Issuing and Paying Agent shall immediately surrender the Letter of Credit to the Bank.

In making draws upon a Letter of Credit, the Issuing and Paying Agent shall be acting as the agent solely of, and for the exclusive benefit of, the Holders of the Notes, and shall not be acting as the agent of the City. The City shall not have any right, title, or interest in or to the Letter of Credit Fund, the funds therein, or funds derived from a draw under a Letter of Credit. The Issuing and Paying Agent shall not apply any funds drawn upon a Letter of Credit to any payment in respect of Notes registered in the name of the City or, to the best knowledge of the Issuing and Paying Agent, any nominee for or any Person who owns such Notes for the sole benefit of the City.

Any provisions herein requiring notice to or from a Bank or the consent of a Bank prior to any action by the Issuing and Paying Agent or the City shall have no force or effect (1) following the later of (i) the expiration of such Bank's Letter of Credit and (ii) the repayment of all monetary obligations owing to such Bank under the Reimbursement Agreement or (2) during any period in which such Bank is continuing to dishonor a conforming Draw or Draws under its Letter of Credit.

SECTION 5.04. Moneys in Funds and Accounts. All funds or accounts held by the Issuing and Paying Agent hereunder shall be accounted for separately as required by this Issuing and Paying Agent Agreement and the Issuing and Paying Agent shall segregate such funds and accounts if so instructed by the City to assist in the calculation of the Rebate Requirement.

The Issuing and Paying Agent shall keep proper books of record and accounts containing complete and correct entries of all transactions made by it relating to the receipt, disbursement, allocation and application of the moneys related to the Notes, including moneys derived from, pledged to, or to be used to make payments on the Notes. Such records shall specify the account or fund to which such moneys are to be allocated.

SECTION 5.05. Investment of Moneys in Funds. Moneys held by the Issuing and Paying Agent hereunder in the Letter of Credit Fund, the Debt Service Fund or the Reimbursement Agreement Fund shall be held uninvested, in cash, and shall not be commingled with any other funds held hereunder. The moneys held by the Issuing and Paying Agent in the Note Repayment Fund established hereunder shall be held in time or demand deposits (including certificates of deposit) in any bank or trust company (including the Trustee) authorized to accept deposits of public funds, and shall be secured at all times by such obligations, and to the fullest extent, as is required by law, and may at the written direction of the City be invested in Permitted Investments, maturing not later than the date on which such moneys are required for payment by the Issuing and Paying Agent. Investment earnings on amounts in Note Repayment Fund shall be deposited therein.

The Issuing and Paying Agent may sell or present for redemption any obligations so purchased by it whenever it shall be necessary in order to provide moneys to meet any payment, and the Issuing and Paying Agent shall not be liable or responsible for any loss resulting from such investment.

The Issuing and Paying Agent may act as principal or agent in the acquisition or disposition of any investment.

ARTICLE VI

COVENANTS OF THE CITY

SECTION 6.01. Punctual Payment. The City will punctually pay or cause to be paid the principal of and interest on all the Notes, in strict conformity with the terms of the Notes and of this Issuing and Paying Agent Agreement, according to the true intent and meaning thereof, but in each case only out of Surplus Revenues as provided in this Issuing and Paying Agent Agreement.

SECTION 6.02. Extension of Payment of Notes. The City will not directly or indirectly extend or assent to the extension of the maturity of any of the Notes or the time of payment of any Notes or claims for interest by the purchase or funding of such Notes or claims for interest or by any other arrangement and in case the maturity of any of the Notes or the time of payment of any such claims for interest shall be extended, such Notes or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Issuing and Paying Agent Agreement, except subject to the prior payment in full of the principal of all of the Notes then Outstanding and of all claims for interest thereon which shall not have been so extended. Nothing in this Section shall be deemed to limit the right of the City to issue debt for the purpose of refunding any Outstanding Notes, and such issuance shall not be deemed to constitute an extension of maturity of Notes.

SECTION 6.03. Waiver of Laws. The City will not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Issuing and Paying Agent Agreement or in the Notes, and all benefit or

advantage of any such law or laws is hereby expressly waived by the City to the extent permitted by law.

SECTION 6.04. Further Assurances. The City will make, execute and deliver any and all such instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Issuing and Paying Agent Agreement and for the better assuring and confirming unto the Owners of the Notes of the rights and benefits provided in this Issuing and Paying Agent Agreement.

SECTION 6.05. Against Encumbrances. The City will not create any pledge, lien or charge upon any of the Surplus Revenues having priority over or having parity with the lien of the Notes except only as permitted in Section 3.05.

SECTION 6.06. Accounting Records and Financial Statements. The City will at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with generally accepted accounting principles, in which complete and accurate entries shall be made of all transactions relating to the Surplus Revenues. Such books of record and account shall be available for inspection by the Issuing and Paying Agent and the Bank at reasonable hours and under reasonable circumstances.

SECTION 6.07. Rebate Fund. (a) The Issuing and Paying Agent shall establish and maintain a fund separate from any other fund established and maintained hereunder designated as the Rebate Fund. Within the Rebate Fund, the Issuing and Paying Agent shall maintain such accounts as shall be necessary in order to comply with the terms and requirements of the Tax Certificate. Subject to the transfer provisions provided in subsection (c) below, all money at any time deposited in the Rebate Fund shall be held by the Issuing and Paying Agent for the account of the City in trust, to the extent required to satisfy the Rebate Requirement (as defined in the Tax Certificate), for payment to the federal government of the United States of America, and neither the Issuing and Paying Agent nor the Owner of any Notes nor any Bank shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Issuing and Paying Agent Agreement and by the Tax Certificate (which is incorporated herein by reference). The City hereby covenants to comply with the directions contained in the Tax Certificate and the Issuing and Paying Agent hereby covenants to comply with all written instructions of the City delivered to the Issuing and Paying Agent pursuant to the Tax Certificate (which instructions shall state the actual amounts to be deposited in or withdrawn from the Rebate Fund and shall not require the Issuing and Paying Agent to make any calculations with respect thereto). The Issuing and Paying Agent shall be deemed conclusively to have complied with the provisions of this Section 6.07(a) if it follows such instructions of the City, and the Issuing and Paying Agent shall have no liability or responsibility to enforce compliance by the City with the terms of the Tax Certificate nor to make computations in connection therewith.

(b) The Issuing and Paying Agent shall hold all amounts in the Rebate Fund uninvested, subject to the restrictions set forth in the Tax Certificate.

(c) Upon receipt of the instructions of the City, the Issuing and Paying Agent shall remit part or all of the balances in the Rebate Fund to the federal government of the United

States of America, as directed. In addition, if such instructions so direct, the Issuing and Paying Agent will deposit moneys into or transfer moneys out of the Rebate Fund from or into such accounts or funds (other than the Letter of Credit Fund) as directed. Any funds remaining in the Rebate Fund after payment of all of the Notes and payment and satisfaction of any Rebate Requirement, shall be withdrawn and remitted to the City in accordance with a Request of the City.

(d) Notwithstanding any other provision of this Issuing and Paying Agent Agreement, including in particular Article X hereof, the obligation to remit the Rebate Requirement to the federal government of the United States of America and to comply with all other requirements of this Section and the Tax Certificate shall survive the defeasance or payment in full of the Notes.

The City shall retain all records with respect to the calculations and instructions required by this Section for at least six (6) years after the date on which the last of the principal of and interest on the Notes has been paid, whether upon maturity or prior redemption thereof.

SECTION 6.08. Tax Covenants. The City covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Tax-Exempt Notes under Section 103 of the Code; provided that, prior to the issuance of any Series of Notes, the City may exclude the application of the covenants contained in this Section 6.08 and Section 6.07 to such Series of Notes, and provided further that the City hereby excludes the Taxable Notes from such application. Without limiting the generality of the foregoing, the City shall comply with all requirements and covenants contained in the Tax Certificate. In the event that at any time the City is of the opinion that for purposes of this Section 6.08 it is necessary to restrict or limit the yield on the investment of any moneys held by the Issuing and Paying Agent under this Issuing and Paying Agent Agreement, the City shall so instruct the Issuing and Paying Agent in writing, and the Issuing and Paying Agent shall take such action as may be necessary in accordance with such instructions.

Notwithstanding any provision of this Section 6.08 and Section 6.07 hereof, if the City shall receive an Opinion of Bond Counsel to the effect that any action required under the Tax Certificate or this Section 6.08 and Section 6.07 hereof is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Notes pursuant to Section 103 of the Code, the City and the Issuing and Paying Agent may rely conclusively on such opinion in complying with the provisions hereof, and the covenants hereunder shall be deemed to be modified to that extent.

SECTION 6.09. Maintenance of Issuing and Paying Agent. The City will at all times maintain an Issuing and Paying Agent for the Notes in New York, New York.

SECTION 6.10. Letters of Credit; Alternate Facility. The City will at all times maintain in effect a Letter or Letters of Credit or one or more other credit facilities (each an "Alternate Facility") in an aggregate Available Amount equal to the sum of the principal amount of each Series of Notes Outstanding hereunder plus interest due at maturity thereof. Notwithstanding anything contained in Section 2.02(b)(ii) to the contrary, the City may obtain an

Alternate Facility to replace one or more of the Letters of Credit then in effect, provided that (i) the Letter or Letters of Credit being replaced (in this Section, the "Existing Letter of Credit") remains in effect and is drawn upon to pay the principal and interest on all Outstanding Notes payable from draws under such Existing Letter of Credit and (ii) the Alternate Facility is in effect at the time the Existing Letter of Credit is terminated or expires. Any assignment of a Letter of Credit by one Bank to another Bank (excluding assignments between agencies or branches of the same Bank) shall be deemed to be a substitution of the Letter of Credit for the purposes of this Section 6.10. The City and the Issuing and Paying Agent agree that the Issuing and Paying Agent will not release an Existing Letter of Credit or accept an Alternate Facility unless:

(a) the City gives 20 days' prior written notice of the proposed substitution to the Issuing and Paying Agent, the Dealers, the Agent (as defined in the First Reimbursement Agreement) and each Bank whose Letter of Credit is to be replaced; and

(b) the Issuing and Paying Agent gives 15 days' prior written notice of the proposed substitution to the Owners, as of the Business Day immediately preceding the date of such notice, of the Outstanding Notes payable from such Existing Letter of Credit; and

(c) the Alternate Facility is delivered to the Issuing and Paying Agent and becomes effective pursuant to its terms on the maturity date of all Outstanding Notes payable from the Existing Letter of Credit; and

(d) the Issuing and Paying Agent shall make a draw on the Existing Letter of Credit on the substitution date, which must be the maturity date for all of the Outstanding Notes payable from the Existing Letter of Credit, in an amount sufficient to pay the entire amount of principal and interest becoming due on such substitution date on all of the Notes payable from such Existing Letter of Credit; and

(e) the Issuing and Paying Agent shall not surrender the Existing Letter of Credit unless and until the Issuing and Paying Agent receives all of the funds drawn as required by clause (d) of this Section 6.10.

SECTION 6.11. Appointment of Dealer. The City covenants and agrees to take all reasonable steps necessary to ensure that, at all times, there shall be a Dealer for the Notes, and to that end shall from time to time enter into a Dealer Agreement or Agreements with one or more Dealers, providing for the services specified in such Dealer Agreements to be performed by such Dealers, in connection with the offering, sale and issuance of Notes.

SECTION 6.12. Provision of Report to Bank. So long as Morgan Guaranty Trust Company of New York, or its successor, shall be the Bank hereunder, the Issuing and Paying Agent shall promptly following each March 1 and September 1 furnish to Morgan Guaranty Trust Company of New York, or its successor, in form and substance satisfactory thereto, a copy of a report setting forth trades, maturities, principal amounts and interest rates for the Notes during the quarter then ended.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES OF NOTEHOLDERS

SECTION 7.01. Events of Default. The following events shall be Events of Default:

(a) default in the due and punctual payment of the principal of any Note when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(b) default in the due and punctual payment of any installment of interest on any Note when and as such interest installment shall become due and payable;

(c) if the City shall fail to observe or perform any covenant, condition, agreement or provision in this Issuing and Paying Agent Agreement on its part to be observed or performed, other than as referred to in subsection (a) or (b) of this Section, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, has been given to the City by the Issuing and Paying Agent; except that, if such failure can be remedied but not within such sixty (60) day period and if the City has taken all action reasonably possible to remedy such failure within such sixty (60) day period, such failure shall not become an Event of Default for so long as the City shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Issuing and Paying Agent;

(d) if any default shall exist under any agreement governing any Parity Debt and such default shall continue beyond the grace period, if any, provided for with respect to such default or if the holder of any Parity Debt exercises a right under the Parity Debt or the corresponding instruments pursuant to which such Parity Debt was issued to declare the principal thereof to be accelerated and payable immediately;

(e) if the City shall be in default under the Reimbursement Agreement;

(f) if the City files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(g) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the City insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the City, or approving a petition filed against the City seeking reorganization of the City under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof; or

(h) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the Revenues,

and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control.

SECTION 7.02. Application of Surplus Revenues and Other Funds After Default. If an Event of Default shall occur and be continuing, the City shall immediately transfer Surplus Revenues held by it to the Issuing and Paying Agent in an amount which is in proportion to the total amount of Surplus Revenues then held by the City as the amount of debt service with respect to the Outstanding Notes bears to the total amount of debt service with respect to Outstanding Notes and Parity Debt, and the Issuing and Paying Agent shall apply all Surplus Revenues and any other funds then held or thereafter received by the Issuing and Paying Agent under any of the provisions of this Issuing and Paying Agent Agreement (except as otherwise provided in this Issuing and Paying Agent Agreement and excluding moneys on deposit in the Letter of Credit Fund or proceeds of draws on a Letter of Credit which shall be used exclusively for the purposes for which such draw or draws were made) as follows and in the following order:

(1) To the payment of any expenses necessary in the opinion of the Issuing and Paying Agent to protect the interests of the Owners of the Notes and of the Banks, including the costs and expenses of the Issuing and Paying Agent and the Noteholders in declaring such Event of Default, and payment of reasonable fees and expenses of the Issuing and Paying Agent (including reasonable fees and disbursements of its counsel and other agents) incurred in and about the performance of its powers and duties under this Issuing and Paying Agent Agreement;

(2) To the payment of the whole amount of the Payment Obligations;

(3) To the payment to the persons entitled thereto of all installments of interest then due and the unpaid principal of any Notes which shall have become due, whether at maturity, acceleration or by call for redemption, in the order of their due dates, with interest on the overdue principal at the rate borne by the respective Notes, subject to the provisions of this Issuing and Paying Agent Agreement; and, if the amount available shall not be sufficient to pay in full all the Notes due or to become due, together with such interest, then to the payment thereof ratably, according to the amounts of principal or interest due or to become due to the persons entitled thereto, without any discrimination or preference.

SECTION 7.03. Issuing and Paying Agent to Represent Noteholders. Upon the occurrence and continuance of an Event of Default or other occasion giving rise to a right in the Issuing and Paying Agent to represent the Noteholders, the Issuing and Paying Agent in its discretion may, and upon the written request of the Owners of not less than twenty-five percent (25%) in aggregate amount of Notes then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of such Owners by such appropriate action, suit, mandamus or other proceedings, as it shall deem most effectual to protect and enforce any such right, at law or in equity, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable right or remedy vested in the Issuing and Paying Agent or in such Owners under this Issuing and Paying Agent Agreement, and upon instituting such proceeding, the Issuing and Paying Agent shall be entitled, as a matter

of right, to the appointment of a receiver of the Surplus Revenues and other assets pledged under this Issuing and Paying Agent Agreement, pending such proceedings. All rights of action under this Issuing and Paying Agent Agreement or the Notes or otherwise may be prosecuted and enforced by the Issuing and Paying Agent without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Issuing and Paying Agent shall be brought in the name of the Issuing and Paying Agent for the benefit and protection of all the Owners of such Notes, subject to the provisions of this Issuing and Paying Agent Agreement (including Section 7.05).

SECTION 7.04. Noteholders' Direction of Proceedings. Anything in this Issuing and Paying Agent Agreement to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of the Notes then Outstanding and the Bank shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Issuing and Paying Agent and upon furnishing the Issuing and Paying Agent with indemnification satisfactory to it, to direct the method of conducting all remedial proceedings taken by the Issuing and Paying Agent hereunder, provided that such direction shall not be otherwise than in accordance with law and the provisions of this Issuing and Paying Agent Agreement, that the Issuing and Paying Agent may take any other action deemed proper by the Issuing and Paying Agent which is not inconsistent with such direction, and that the Issuing and Paying Agent shall have the right to decline to follow any such direction which in the opinion of the Issuing and Paying Agent would be unjustly prejudicial to Noteholders or holders of Parity Debt not parties to such direction. In the event of any conflict between the direction of the Bank and that of the Owners, the Issuing and Paying Agent shall follow the direction of the Bank so long as the Bank has not failed to honor a properly presented and conforming drawing under the Letter of Credit.

SECTION 7.05. Limitation on Noteholders' Right to Sue. No Owner of any Note shall have the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Issuing and Paying Agent Agreement, or any applicable law with respect to such Note, unless (1) such Owner shall have given to the Issuing and Paying Agent written notice of the occurrence of an Event of Default; (2) the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Notes then Outstanding shall have made written request upon the Issuing and Paying Agent to exercise the powers hereinbefore granted; (3) such Owner or said Owners shall have tendered to the Issuing and Paying Agent reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (4) the Issuing and Paying Agent shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Issuing and Paying Agent; and (5) the Issuing and Paying Agent shall not have received contrary directions from the Owners of a majority in aggregate principal amount of the Notes then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Notes of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Notes shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Issuing and Paying Agent Agreement or the rights of any other

Owners of Notes, or to enforce any right under this Issuing and Paying Agent Agreement, or under applicable law with respect to the Notes, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Notes, subject to the provisions of this Issuing and Paying Agent Agreement.

SECTION 7.06. Absolute Obligation of the City. Nothing in Section 7.05 or in any other provision of this Issuing and Paying Agent Agreement, or in the Notes, contained shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the principal of and interest on the Notes to the respective Owners of the Notes at their respective dates of maturity, but only out of the Surplus Revenues and other assets herein pledged therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Notes.

SECTION 7.07. Termination of Proceedings. In case any proceedings taken by the Issuing and Paying Agent or any one or more Noteholders on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Issuing and Paying Agent or the Noteholders, then in every such case the City, the Issuing and Paying Agent and the Noteholders, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the City, the Issuing and Paying Agent and the Noteholders shall continue as though no such proceedings had been taken.

SECTION 7.08. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Issuing and Paying Agent or to the Owners of the Notes is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

SECTION 7.09. No Waiver of Default. No delay or omission of the Issuing and Paying Agent or of any Owner of the Notes to exercise any right or power arising upon the occurrence of any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Issuing and Paying Agent Agreement to the Issuing and Paying Agent or to the Owners of the Notes may be exercised from as often as may be deemed expedient.

ARTICLE VIII

THE ISSUING AND PAYING AGENT

SECTION 8.01. Appointment: Duties, Immunities and Liabilities of Issuing and Paying Agent. (a) Deutsche Bank Trust Company Americas is appointed as Issuing and Paying Agent under this Issuing and Paying Agent Agreement and hereby accepts the duties imposed upon it as Issuing and Paying Agent hereunder and to perform all the functions and duties of the Issuing and Paying Agent hereunder, subject to the terms and conditions set forth in this Issuing and Paying Agent Agreement. The Issuing and Paying Agent shall, prior to an Event of Default, and after the curing of all Events of Default which may have occurred, perform such

duties and only such duties as are specifically set forth in this Issuing and Paying Agent Agreement and no implied covenants shall be read into this Issuing and Paying Agent Agreement against the Issuing and Paying Agent.

(b) The City may remove the Issuing and Paying Agent at any time unless an Event of Default shall have occurred and then be continuing, and shall remove the Issuing and Paying Agent if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate amount of principal of the Notes then Outstanding (or their attorneys duly authorized in writing) or if at any time the Issuing and Paying Agent shall cease to be eligible in accordance with subsection (e) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Issuing and Paying Agent or its property shall be appointed, or any public officer shall take control or charge of the Issuing and Paying Agent or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Issuing and Paying Agent, and thereupon shall appoint a successor Issuing and Paying Agent by an instrument in writing.

(c) The Issuing and Paying Agent may at any time resign by giving written notice of such resignation to the City, the Bank and the Dealer. Upon receiving such notice of resignation, the City shall promptly appoint a successor Issuing and Paying Agent by an instrument in writing. Prior to any voluntary resignation or any sale, assignment, merger, consolidation or reorganization by the Issuing and Paying Agent, the Issuing and Paying Agent shall pay to the City any and all amounts which will be payable by the City to the Bank or to the provider of any Alternate Facility due to any resulting transfer of the Letter of Credit or Alternate Facility.

(d) Any removal or resignation of the Issuing and Paying Agent and appointment of a successor Issuing and Paying Agent shall become effective upon acceptance of appointment by the successor Issuing and Paying Agent. If no successor Issuing and Paying Agent shall have been appointed and have accepted appointment within sixty (60) days of giving notice of removal or notice of resignation as aforesaid, the resigning Issuing and Paying Agent or any Noteholder (on behalf of himself and all other Noteholders) may petition any court of competent jurisdiction for the appointment of a successor Issuing and Paying Agent, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Issuing and Paying Agent. Any successor Issuing and Paying Agent appointed under this Issuing and Paying Agent Agreement, shall signify its acceptance of such appointment by executing and delivering to the City and to its predecessor Issuing and Paying Agent a written acceptance thereof, and thereupon such successor Issuing and Paying Agent, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Issuing and Paying Agent, with like effect as if originally named Issuing and Paying Agent herein; but, nevertheless at the Request of the City or the request of the successor Issuing and Paying Agent, such predecessor Issuing and Paying Agent shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Issuing and Paying Agent all the right, title and interest of such predecessor Issuing and Paying Agent in and to any property held by it under this Issuing and

Paying Agreement and shall pay over, transfer, assign and deliver to the successor Issuing and Paying Agent any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Issuing and Paying Agent, the City shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Issuing and Paying Agent all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Issuing and Paying Agent as provided in this subsection, the City shall give notice of the succession of such Issuing and Paying Agent to the trusts hereunder by mail to the Bank and the Dealer.

(e) Any Issuing and Paying Agent appointed under the provisions of this Section in succession to the Issuing and Paying Agent shall be a trust company or bank having the powers of a trust company having a combined capital and surplus of at least fifty million dollars (\$50,000,000), subject to supervision or examination by federal or state authority, and having a Corporate Trust Office in New York, New York. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Issuing and Paying Agent shall cease to be eligible in accordance with the provisions of this subsection (e), the Issuing and Paying Agent shall resign immediately in the manner and with the effect specified in this Section.

If, by reason of the judgment of any court, the Issuing and Paying Agent or any successor Issuing and Paying Agent is rendered unable to perform its duties hereunder, and if no successor Issuing and Paying Agent be then appointed, all such duties and all of the rights and powers of the Issuing and Paying Agent hereunder shall be assumed by and vest in the Director of Finance and Administration of the City in trust for the benefit of the Noteowners.

SECTION 8.02. Merger or Consolidation. Any company into which the Issuing and Paying Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Issuing and Paying Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under subsection (e) of Section 8.01, shall be the successor to such Issuing and Paying Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

SECTION 8.03. Liability of Issuing and Paying Agent. (a) The recitals of facts herein and in the Notes contained shall be taken as statements of the City, and the Issuing and Paying Agent assumes no responsibility for the correctness of the same, and makes no representations as to the validity or sufficiency of this Issuing and Paying Agreement or of the Notes as to the sufficiency of the Surplus Revenues or the priority of the lien of this Issuing and Paying Agreement thereon, or as to the financial or technical feasibility of any portion of the Project and shall not incur any responsibility in respect of any such matter, other than in connection with the duties or obligations expressly herein or in the Notes assigned to or imposed upon it. The Issuing and Paying Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence, willful misconduct or breach of the express

terms and conditions hereof. The Issuing and Paying Agent and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in any of the Notes and may join in any action which any Owner of a Note may be entitled to take, with like effect as if the Issuing and Paying Agent was not the Issuing and Paying Agent under this Issuing and Paying Agreement. The Issuing and Paying Agent may in good faith hold any other form of indebtedness of the City, own, accept or negotiate any drafts, bills of exchange, acceptances or obligations of the City and make disbursements for the City and enter into any commercial or business arrangement therewith, without limitation.

(b) The Issuing and Paying Agent shall not be liable for any error of judgment made in good faith by a responsible officer unless it shall be proved that the Issuing and Paying Agent was negligent in ascertaining the pertinent facts. The Issuing and Paying Agent may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, but the Issuing and Paying Agent shall be liable for the negligence or misconduct of any such attorney, agent, or receiver selected by it.

(c) The Issuing and Paying Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Notes at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Issuing and Paying Agent, or exercising any trust or power conferred upon the Issuing and Paying Agent under this Issuing and Paying Agreement.

(d) Except for the obligation of the Issuing and Paying Agent to draw on the Letters of Credit in amounts sufficient to pay the interest on and principal of the Notes when due pursuant to Section 5.03 hereof, the Issuing and Paying Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Issuing and Paying Agreement at the request, order or direction of any of the Noteholders pursuant to the provisions of this Issuing and Paying Agreement, including, without limitation, the provisions of Article VII hereof, unless such Noteholders shall have offered to the Issuing and Paying Agent security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

(e) No provision of this Issuing and Paying Agreement shall require the Issuing and Paying Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not assured to its satisfaction.

(f) The Issuing and Paying Agent shall not be deemed to have knowledge of and shall not be required to take any action with respect to, any Event of Default (other than an Event of Default described in subsections (a) or (b) of Section 7.01) or event which would, with the giving of notice, the passage of time or both, constitute an Event of Default, unless the Issuing and Paying Agent shall have actual knowledge of such event or shall have been notified of such event by the City, the Bank, or the Owners of 25% of the principal amount of the Notes at the time Outstanding. Without limiting the generality of the foregoing, the Issuing and Paying

Agent shall not be required to ascertain, monitor or inquire as to the performance or observance by the City of the terms, conditions, covenants or agreements set forth in Article VI hereof (including, without limitation, the covenants of the City set forth in Sections 6.07 or 6.08 hereof), other than the covenants of the City to make payments with respect to the Notes when due as set forth in Section 6.01 and to file with the Issuing and Paying Agent when due, such reports and certifications as the City is required to file with the Issuing and Paying Agent hereunder, or set forth in the Reimbursement Agreement.

(g) No permissive power, right or remedy conferred upon the Issuing and Paying Agent hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(h) The Issuing and Paying Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document but the Issuing and Paying Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Issuing and Paying Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the City, personally or by agent or attorney.

(i) The Issuing and Paying Agent shall not be responsible for:

(1) the application or handling by the City of any Surplus Revenues or other moneys transferred to or pursuant to Request of the City in accordance with the terms and conditions hereof;

(2) the application and handling by the City of any other fund or account designated to be held by the City hereunder;

(3) any error or omission by the City in making any computation or giving any instruction pursuant to Sections 6.07 and 6.08 hereof and may rely conclusively on any computations or instructions furnished to it by the City in connection with the requirements of Sections 6.07, 6.08 and the Tax Certificate;

(4) the construction, operation or maintenance of any portion of the Project.

(j) Whether or not therein expressly so provided, every provision of this Issuing and Paying Agreement relating to the conduct or affecting the liability of or affording protection to the Issuing and Paying Agent shall be subject to the provisions of this Article VIII.

SECTION 8.04. Right of Issuing and Paying Agent to Rely on Documents. The Issuing and Paying Agent shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Issuing and Paying Agent may consult with counsel, including, without limitation, counsel of or to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good

faith and in accordance therewith unless it shall be proved that the Issuing and Paying Agent was negligent in ascertaining the pertinent facts.

Whenever in the administration of the trusts imposed upon it by this Issuing and Paying Agreement the Issuing and Paying Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the City, and such Certificate shall be full warrant to the Issuing and Paying Agent for any action taken or suffered in good faith under the provisions of this Issuing and Paying Agreement in reliance upon such Certificate, but in its discretion the Issuing and Paying Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable. The Issuing and Paying Agent may also rely conclusively on any report or certification of any certified public accountant, investment banker, financial consultant, or other expert selected by the City or selected by the Issuing and Paying Agent with due care in connection with matters required to be proven or ascertained in connection with its administration of the trusts created hereby.

SECTION 8.05. Compensation and Indemnification of Issuing and Paying Agent. The City covenants to pay to the Issuing and Paying Agent from time to time, and the Issuing and Paying Agent shall be entitled to, reasonable compensation for all services rendered by it in the exercise and performance of any of the powers and duties hereunder of the Issuing and Paying Agent, and the City will pay or reimburse the Issuing and Paying Agent upon its request for all expenses, disbursements and advances incurred or made by the Issuing and Paying Agent in accordance with any of the provisions of this Issuing and Paying Agreement (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, default or willful misconduct. The City, to the extent permitted by law, shall indemnify, defend and hold harmless the Issuing and Paying Agent against any loss, damages, liability or expense incurred without negligence or bad faith on the part of the Issuing and Paying Agent, arising out of or in connection with the acceptance or administration of the trusts created hereby, including costs and expenses (including reasonable attorneys' fees) of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. The rights of the Issuing and Paying Agent and the obligations of the City under this Section 8.05 shall survive the discharge of the Notes and this Issuing and Paying Agreement and the resignation or removal of the Issuing and Paying Agent.

ARTICLE IX

MODIFICATION OR AMENDMENT OF THIS ISSUING AND PAYING AGENT AGREEMENT

SECTION 9.01. Amendments Permitted. (a) (1) This Issuing and Paying Agreement and the rights and obligations of the City, the Owners of the Notes and the Issuing and Paying Agent may be modified or amended at any time by a Supplement, which the City and the Issuing and Paying Agent may enter into with the written consent of the Bank and the Owners of a majority in aggregate principal amount of the Notes (or, if such Supplement is only applicable to a Series of Notes, such Series of Notes) then Outstanding and which shall have

been filed with the Issuing and Paying Agent; provided that if such modification or amendment will, by its terms, not take effect so long as any Notes of any particular maturity remain Outstanding, the consent of the Owners of such Notes shall not be required and such Notes shall not be deemed to be Outstanding for the purpose of any calculation of Notes Outstanding under this Section.

(2) This Issuing and Paying Agreement and the rights and obligations of the City and of the Owners of the Notes and of the Issuing and Paying Agent may also be modified or amended at any time by a Supplement entered into by the City and the Issuing and Paying Agent which shall become binding when the written consents of the Bank and each provider of a Letter of Credit or an Alternate Facility shall have been filed with the Issuing and Paying Agent, provided that at such time the payment of all the principal of and interest on all Outstanding Notes shall be payable under a Letter of Credit or an Alternate Facility the provider of which shall be a financial institution or association having unsecured debt obligations rated, or insuring or securing other debt obligations rated on the basis of such insurance or letters of credit, in one of the three highest Rating Categories of each Rating Agency.

(3) No such modification or amendment shall (A) extend the fixed maturity of any Note, or reduce the amount of principal thereof, or extend the time of payment provided for any Note, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Note so affected, or (B) reduce the aforesaid percentage of principal the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Surplus Revenues and other assets pledged under this Issuing and Paying Agreement prior to or on a parity with the lien created by this Issuing and Paying Agreement, or deprive the Owners of the Notes or the Banks of the lien created by this Issuing and Paying Agreement on such Surplus Revenues and other assets (in each case, except as expressly provided in this Issuing and Paying Agreement), without the consent of the Owners of all of the Notes then Outstanding and the Bank. It shall not be necessary for the consent of the Noteholders to approve the particular form of any Supplement, but it shall be sufficient if such consent shall approve the substance thereof.

(b) This Issuing and Paying Agreement and the rights and obligations of the City, of the Issuing and Paying Agent and of the Owners of the Notes may also be modified or amended at any time by a Supplement, which the City may adopt without the consent of any Noteholders but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the City in this Issuing and Paying Agreement contained other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Notes or the Reimbursement Agreement (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the City;

(2) to make provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Issuing and Paying Agreement;

(3) to modify, amend or supplement this Issuing and Paying Agreement in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute, and which shall not materially and adversely affect the interests of the Owners of the Notes;

(4) to make modifications or adjustments necessary, appropriate or desirable to provide for the issuance of Parity Debt with such interest rate, payment, maturity and other terms as the City may deem desirable; subject to the provisions of Sections 3.03, 3.04, and 3.05.

(5) to provide for the issuance of Notes in book-entry form, provided that no such provision shall materially and adversely affect the interests of the Owners of the Notes;

(6) to make modifications or adjustments necessary, appropriate or desirable to accommodate credit enhancements and liquidity facilities, including any Alternate Facility, provided that no such provision shall materially and adversely affect the interests of the Owners of the Notes;

(7) if the City agrees in a Supplement to maintain the exclusion of interest on a Series of Notes from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;

(8) to provide for the issuance of an additional Series of Notes pursuant to provisions of Section 3.04 or Section 3.05; and

(9) for any other purpose that does not materially and adversely affect the interests of the Owners of the Notes or the Banks, including, without limitation, to provide for changes requested by a Rating Agency in order to obtain or maintain a credit rating for any Series of Notes.

Notwithstanding any other provision hereof, no modification or amendment hereto shall affect the rights, remedies or security of the Banks hereunder without the prior written consent of the Banks.

SECTION 9.02. Effect of Supplement. From and after the time any Supplement becomes effective pursuant to this Article, this Issuing and Paying Agreement shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Issuing and Paying Agreement of the City, the Banks, the Issuing and Paying Agent and all Owners of Notes Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms

and conditions of any such Supplement shall be deemed to be part of the terms and conditions of this Issuing and Paying Agreement for any and all purposes.

SECTION 9.03. Amendment of Particular Notes. The provisions of this Article shall not prevent any Noteholder from accepting any amendment as to the particular Notes held by him, provided that due notation thereof is made on such Notes.

ARTICLE X

DEFEASANCE

SECTION 10.01. Payment of Notes. Notes of any Series or a portion thereof may be paid by the City in any of the following ways:

(a) by paying or causing to be paid the principal of and interest on such Outstanding Notes, as and when the same become due and payable;

(b) by depositing with the Issuing and Paying Agent, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 10.03) to pay such Outstanding Notes; or

(c) by delivering to the Issuing and Paying Agent, for cancellation by it, such Outstanding Notes.

If the City shall pay all Series for which any Notes are Outstanding and also pay or cause to be paid all other sums payable hereunder by the City and shall pay all Payment Obligations, then and in that case, at the election of the City (evidenced by a Certificate of the City, filed with the Issuing and Paying Agent and the Bank, signifying the intention of the City to discharge all such indebtedness and this Issuing and Paying Agreement), and notwithstanding that any Notes shall not have been surrendered for payment, this Issuing and Paying Agreement and the pledge of Revenues and other assets made under this Issuing and Paying Agreement and, except as provided in Section 6.07 and Section 6.08, all covenants, agreements and other obligations of the City under this Issuing and Paying Agreement shall cease, terminate, become void and be completely discharged and satisfied. In such event, upon Request of the City, the Issuing and Paying Agent shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and shall execute and deliver to the City all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Issuing and Paying Agent shall pay over, transfer, assign or deliver to the City all moneys (other than those held in the Letter of Credit Fund) or securities or other property held by it pursuant to this Issuing and Paying Agreement which, as evidenced by a verification report, upon which the Issuing and Paying Agent may conclusively rely, from a firm of independent certified public accountants, or other firm acceptable to the Issuing and Paying Agent, are not required for the payment of Notes not theretofore surrendered for such payment.

SECTION 10.02. Discharge of Liability on Notes. Upon the deposit with the Issuing and Paying Agent, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay any

Outstanding Note, then (provided that the Bank has been paid in full all amounts then owing under the Reimbursement Agreement) all liability of the City in respect of such Note shall cease, terminate and be completely discharged, provided that the Owner thereof shall thereafter be entitled to the payment of the principal of and interest on such Note, and the City shall remain liable for such payment, but only out of such money or securities deposited as aforesaid for their payment, subject, however, to the provisions of Section 10.04 and the continuing duties of the Issuing and Paying Agent hereunder including, without limitation, the provisions of Section 2.07.

The City may at any time surrender to the Issuing and Paying Agent for cancellation by it any Notes previously issued and delivered, which the City may have acquired in any manner whatsoever, and such Notes, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 10.03. Deposit of Money or Securities with Issuing and Paying Agent. Whenever in this Issuing and Paying Agent Agreement it is provided or permitted that there be deposited with or held in trust money or securities in the necessary amount to pay any Notes, the money or securities so to be deposited or held may include money or securities held by the Issuing and Paying Agent in the funds and accounts (other than the Letter of Credit Fund) established pursuant to this Issuing and Paying Agreement and shall be:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Notes and all unpaid interest thereon to maturity; or

(b) noncallable and non-prepayable investment securities consisting of (i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed as to full and timely payment by, the United States of America, (ii) any certificates, receipts, securities or other obligations (excluding mutual funds and unit investment trusts) evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i), the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Issuing and Paying Agent (upon which opinion the Issuing and Paying Agent may conclusively rely), provide money sufficient to pay the principal of and all unpaid interest to maturity, on the Notes to be paid, as such principal and interest become due;

provided, in each case, that the Issuing and Paying Agent, escrow agent or other fiduciary shall have been irrevocably instructed (by the terms of this Issuing and Paying Agreement or by Request of the City) to apply such money to the payment of such principal and interest with respect to such Notes.

SECTION 10.04. Payment of Notes After Discharge of Issuing and Paying Agent Agreement. Provided that the Bank has been paid in full all amounts then owing under the Reimbursement Agreement and the Letters of Credit have terminated, any moneys (other than those held in the Letter of Credit Fund) held by the Issuing and Paying Agent in trust for the payment of the principal of, or interest on, any Notes and remaining unclaimed for two (2) years after the principal of all of the Notes has become due and payable, if such moneys were so held at such date, or two (2) years after the date of deposit of such moneys if deposited after said date

when all of the Notes became due and payable, shall, upon Request of the City, be repaid to the City free from the trusts created by this Issuing and Paying Agreement, and all liability of the Issuing and Paying Agent with respect to such moneys shall thereupon cease. All moneys held by or on behalf of the Issuing and Paying Agent for the payment of principal of or interest on Notes shall be held uninvested, in trust for the account of the Owners thereof, and the Issuing and Paying Agent shall not be required to pay Owners any interest on, or be liable to the Owners or any other person (other than the City) for any interest earned on, moneys so held. Any interest earned thereon (other than on funds held in the Letter of Credit Fund) shall belong to the City and shall be deposited monthly by the Issuing and Paying Agent into the Note Repayment Fund.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. Liability of City Limited to Surplus Revenues. Notwithstanding anything in this Issuing and Paying Agreement or in the Notes contained, the City shall not be required to advance any moneys derived from any source other than the Surplus Revenues and other assets pledged hereunder for any of the purposes in this Issuing and Paying Agreement mentioned, whether for the payment of the principal of or interest on the Notes or for any other purpose of this Issuing and Paying Agreement.

SECTION 11.02. Successor Is Deemed Included in All References to Predecessor. Whenever in this Issuing and Paying Agreement either the City or the Issuing and Paying Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Issuing and Paying Agreement contained by or on behalf of the City or the Issuing and Paying Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.03. Limitation of Rights to City, Issuing and Paying Agent, Bank and Noteholders. Nothing in this Issuing and Paying Agreement or in the Notes expressed or implied is intended or shall be construed to give to any person other than the City, the Issuing and Paying Agent, the Banks and the Owners of the Notes, any legal or equitable right, remedy or claim under or in respect of this Issuing and Paying Agreement or any covenant, condition or provision therein or herein contained; all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the City, the Issuing and Paying Agent, the Banks and the Owners of the Notes and any Parity Debt, and the Banks and the Owners of the Notes and any Parity Debt shall be third party beneficiaries of the Issuing and Paying Agent Agreement.

SECTION 11.04. Waiver of Notice. Whenever in this Issuing and Paying Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 11.05. Destruction or Delivery of Canceled Notes. Whenever in this Issuing and Paying Agreement provision is made for the cancellation by the Issuing and Paying

Agent and the delivery to the City of any Notes, the Issuing and Paying Agent may, in its sole discretion, in lieu of such cancellation and delivery, destroy such Notes, and deliver a certificate of such destruction to the City.

SECTION 11.06. Severability of Invalid Provisions. If any one or more of the provisions contained in this Issuing and Paying Agreement or in the Notes shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Issuing and Paying Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Issuing and Paying Agreement, and this Issuing and Paying Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The City hereby declares that it would have adopted this Issuing and Paying Agreement and each and every other Section, subsection, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Notes pursuant thereto irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses or phrases of this Issuing and Paying Agreement may be held illegal, invalid or unenforceable.

SECTION 11.07. Notices. Except as otherwise provided herein or in the Issuing and Paying Agent Agreement, the Reimbursement Agreement or the Dealer Agreement, for the purposes of each such Agreement, respectively, any notice to or demand may be served or presented, and such demand may be made and shall be deemed to have been sufficiently given or served for all purposes by being deposited, first-class mail postage prepaid, in a post office letter box, addressed, as the case may be, to the parties as follows:

Issuing and

Paying Agent: Deutsche Bank Trust Company Americas
101 California Street, 46th Floor
San Francisco, California 94111
Attention: _____

City:

City of San José
Finance – Debt Management
200 East Santa Clara Street, 13th Floor
San José, California 95113
Attention: Debt Administrator

Bank:

Attention: _____

Dealer:

Attention: _____

SECTION 11.08. Notice to Rating Agencies. The Issuing and Paying Agent shall give notice to each Rating Agency of any supplements or amendments to or termination of the Issuing and Paying Agreement, any changes to, or expiration, substitution, termination or extension of the term of, the Reimbursement Agreement, any substitution of the Dealer, and the appointment of a successor Issuing and Paying Agent and of when there are no longer any Notes outstanding under the Issuing and Paying Agreement, initially at each respective address given below, or at such other address as may be furnished to the City from time to time by each Rating Agency:

Moody's Investors Service, Inc.
7 World Trade Center at 250 Greenwich Street
New York, New York 10007
Attn: Public Finance Group - MSPG - 23rd Floor
Facsimile No.: (212) 553-1066

Standard & Poor's Ratings Services
55 Water Street, 38th Floor
New York, NY 10041
Attn: Municipal Structured Surveillance

Fitch Ratings, Inc.
One State Street Plaza
New York, NY 10004
Attn: Municipal Structured Finance

SECTION 11.09. Evidence of Rights of Noteholders. Any request, consent or other instrument required or permitted by this Issuing and Paying Agreement to be signed and executed by Noteholders may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Noteholders in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Notes transferable by delivery, shall be sufficient for any purpose of this Issuing and Paying Agreement and shall be conclusive in favor of the Issuing and Paying Agent and of the City if made in the manner provided in this Section.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Notes shall be proved by the Note registration books held by the Issuing and Paying Agent. The Issuing and Paying Agent may establish a record date as of which to measure consent of the Noteowners in order to determine whether the requisite consents are received.

Any request, consent, or other instrument or writing of the Owner of any Note shall bind every future Owner of the same Note and the Owner of every Note issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Issuing and Paying Agent or the City in accordance therewith or reliance thereon.

SECTION 11.10. Disqualified Notes. In determining whether the Owners of the requisite aggregate principal amount of Notes have concurred in any demand, request, direction, consent or waiver under this Issuing and Paying Agreement, Notes which are owned or held by or for the account of the City, or by any other obligor on the Notes, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the City or any other obligor on the Notes, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Notes so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Issuing and Paying Agent the pledgee's right to vote such Notes and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the City or any other obligor on the Notes. In case of a dispute as to such right, any decision by the Issuing and Paying Agent taken upon the advice of counsel shall be full protection to the Issuing and Paying Agent.

SECTION 11.11. Money Held for Particular Notes. The money held by the Issuing and Paying Agent for the payment of the interest or principal due on any date with respect to particular Notes shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Notes entitled thereto, subject, however, to the provisions of Section 10.04.

SECTION 11.12. Funds and Accounts. Any fund required by this Issuing and Paying Agreement to be established and maintained by the Issuing and Paying Agent may be established and maintained in the accounting records of the Issuing and Paying Agent, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds shall at all times be maintained in accordance with customary standards of the industry, to the extent practicable, and with due regard for the protection of the security of the Notes and the rights of every Holder thereof.

SECTION 11.13. Article and Section Headings and References. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Issuing and Paying Agreement.

All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Issuing and Paying Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Issuing and Paying Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

SECTION 11.14. Waiver of Personal Liability. No Board member, officer, agent or employee of the City or the Issuing and Paying Agent shall be individually or personally liable for the payment of the principal of or interest on the Notes or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such Board member, officer, agent or employee of the City or the Issuing and Paying Agent from the performance of any official duty provided by law or by this Issuing and Paying Agreement.

SECTION 11.15. Governing Law. This Issuing and Paying Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 11.16. Business Day. Except as specifically set forth in a Supplement, any payments or transfers which would otherwise become due on any day which is not a Business Day shall become due or shall be made on the next succeeding Business Day.

SECTION 11.17. Effective Date of Amended and Restated Issuing and Paying Agent Agreement. This Issuing and Paying Agent Agreement shall become effective upon execution and delivery hereof.

SECTION 11.18. Execution in Counterparts. This Issuing and Paying Agent Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Issuing and Paying Agent Agreement by their officers thereunto duly authorized as of the day and year first written above.

THE CITY OF SAN JOSE

By: _____
Director of Finance

Approved as to Form:

By: _____
Deputy City Attorney

DEUTSCHE BANK TRUST COMPANY
AMERICAS, as Issuing and Paying Agent

By: _____
Authorized Officer

EXHIBIT A

[Form of Note]

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
CITY OF SAN JOSE

CITY OF SAN JOSE
SAN JOSE INTERNATIONAL AIRPORT
SUBORDINATED COMMERCIAL PAPER NOTES

SERIES __ (____)

Principal Amount _____

Note Number:

Interest Rate:

Registered Owner:

Date of Issue:

Maturity Date:

Maturity Value: \$

The City of San José (the "City"), for value received, hereby promises to pay to the Registered Owner designated above (herein called the "Owner"), on the Maturity Date identified above, but solely from the revenues, income and other moneys hereinafter mentioned, the Principal Amount identified above, together with interest if any on said Principal Amount at the Interest Rate per annum (calculated on the basis of a year containing 365 or 366 days as applicable and actual number of days elapsed) [for Taxable Notes, substitute: "(calculated on the basis of a 360-day year containing 12 30-day months and actual number of days elapsed)"] identified above, upon the presentation and surrender hereof at the Corporate Trust Office of Deutsche Bank Trust Company Americas (together with any successor, the "Issuing and Paying Agent"). For payment of this Note on the Maturity Date hereof, this Note must be presented to the Issuing and Paying Agent no later than 2:15 p.m. (New York City time) on such day. If a Note is presented for payment after 2:15 p.m. (New York City time), payment therefor shall be made by the Issuing and Paying Agent on the next succeeding business day without the accrual of additional interest thereon. The principal of and interest on this Note shall be payable in lawful money of the United States of America. This Note may be transferred or exchanged in

accordance with the terms and conditions and upon payment of the charges set forth in the Issuing and Paying Agent Agreement hereinafter described.

The City has entered into an Amended and Restated Issuing and Paying Agent Agreement, dated as of September 1, 2009 (as further supplemented and amended from time to time, the "Agreement"), with the Issuing and Paying Agent. Such Agreement provides that the City may issue additional notes and incur other indebtedness under the terms and conditions set forth in the Agreement. All notes issued thereunder and secured thereby are collectively referred to herein as "Notes."

This Note is one of a duly authorized issue of Notes issued under, and secured by, the Agreement. The Notes of such issue will, at the time of issuance, be designated as the "The City of San José, San José International Airport Subordinated Commercial Paper Notes, Series _ (____)" . The Agreement also provides for the incurrence of additional debt, including the issuance of additional Notes, to be secured equally and ratably with the Notes, but only subject to the conditions and limitations contained in the Agreement.

The Notes and the interest thereon (to the extent set forth in the Agreement), together with the Parity Debt issued by the City, and the interest thereon, are payable from, and are secured by amounts drawn under an irrevocable, direct-pay letter of credit issued by the applicable Bank, with respect to such Series of Notes, and a pledge of certain revenues of the City's Norman Y. Mineta San José International Airport, as more particularly described in the Agreement, the "Surplus Revenues"). All of the Notes and Parity Debt are equally secured by a pledge of the Surplus Revenues.

The Notes are limited obligations of the City and are payable, both as to principal and interest, solely from the amounts drawn under the applicable Letter of Credit and Surplus Revenues, and the City is not obligated to pay the Notes except from such amounts. Neither the State of California nor any of its political subdivisions (except the City to the extent of the Surplus Revenues) is liable on the Notes, nor in any event shall the Notes be payable out of any funds other than those of the City as specified in the Agreement. The Notes do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

This Note shall not be entitled to any security or benefit under the Agreement or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been signed by the Issuing and Paying Agent.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Note and in the issuing of this Note, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this Note, together with all other indebtedness of the City pertaining to the Revenues, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Notes permitted to be issued under the Agreement or the laws of the State.

IN WITNESS WHEREOF, THE CITY OF SAN JOSE has caused this Note to be executed in its name and on its behalf by the facsimile signature of the Authorized Representative of the City and attested by the facsimile signature of the City Clerk, and to be dated the date set forth above.

CITY OF SAN JOSE

By: _____
Authorized Representative

Attest:

City Clerk

CERTIFICATE OF AUTHENTICATION

This Note is one of an issue described in the Issuing and Paying Agent Agreement mentioned herein.

DEUTSCHE BANK TRUST COMPANY
AMERICAS, as Issuing and Paying Agent

By: _____
Authorized Signatory

Date of Authentication: _____

EXHIBIT B

[Form of DTC Municipal Commercial Paper Master Note]

B-1

Council Agenda: 9-1-09

Item No.: 3.4

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT C

[FORM OF ISSUANCE REQUEST TO PAYING AGENT*]

This is to confirm the Issuance Request previously given by telephone on this date.

Pursuant to Section 3.01 of the Amended and Restated Issuing and Paying Agent Agreement, dated as of _____ 1, 2009 (the "Issuing and Paying Agent Agreement"), between the City and the Issuing and Paying Agent, the undersigned, an Authorized Representative of the City of San José (the "City"), does hereby request Deutsche Bank Trust Company Americas, as Issuing and Paying Agent (the "Issuing and Paying Agent") under the Issuing and Paying Agent Agreement, to issue Commercial Paper Notes, as follows:

1. Date of Requested Issuance: _____
2. Principal Amount and Purchase Price for Notes

	<u>Principal Amount</u>	<u>Purchase Price</u>
A. Renewal Notes, Series A-1	\$ _____	\$ _____
Original Issue Notes, Series A-1:	_____	_____
B. Renewal Notes, Series A-2:	_____	_____
Original Issue Notes, Series A-2:	_____	_____
C. Renewal Notes, Series B:	_____	_____
Original Issue Notes, Series B:	_____	_____
D. Renewal Notes, Series C:	_____	_____
Original Issue Notes, Series C:	_____	_____
E. Renewal Notes, Series D[-1]:	_____	_____
Original Issue Notes, Series D[-1]:	_____	_____
F. [Renewal Notes, Series D-2:	_____	_____
Original Issue Notes, Series D-2:]	_____	_____
G. Renewal Notes, Series E:	_____	_____
Original Issue Notes, Series E:	_____	_____
H. Renewal Notes, Series F:	_____	_____
Original Issue Notes, Series F:	_____	_____
Total Principal Amount and Purchase Price for Notes:	\$ _____	\$ _____

Pursuant to Section 3.01 of the Issuing and Paying Agent Agreement the undersigned hereby certifies as follows:

- (i) that all action on the part of the City necessary for the valid issuance of the Notes to be issued has been taken and has not been rescinded or revoked;
- (ii) that the Notes in the hands of the Owners thereof will be valid and binding obligations of the City according to their terms;

* To promptly follow telephone issuance request, given no later than 12:30 p.m. (New York city time) on the Date of Issuance specified in Paragraph 1 herein.

(iii) that no Event of Default under Section 7.01 of the Issuing and Paying Agent Agreement has occurred and is continuing as of the date of this Issuance Request; and

(iv) the City is in compliance with the covenants set forth in Article VI of the Issuing and Paying Agent Agreement, and including, without limitation (except in the case of Taxable Notes the interest with respect to which is not expected to be excluded from gross income for federal income tax purposes under the Code), the tax covenants contained in Section 6.07 and 6.08 and the Tax Certificate and hereby reconfirms all of its expectations set forth in the Tax Certificate, as of the date of this Issuance Request.

All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Issuing and Paying Agent Agreement.

Date: _____

Request Number: _____

THE CITY OF SAN JOSE

Authorized Finance Representative

Authorized Airport Representative

A. Term of Series A-1 Notes (Non-AMT):

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Issue Price</u>	<u>Interest Rate</u>
	\$		

B. Term of Series A-2 Notes (Non-AMT/Private Activity):

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Issue Price</u>	<u>Interest Rate</u>
	\$		

C. Terms of Series B Notes (AMT):

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Issue Price</u>	<u>Interest Rate</u>

D. Terms of Series C Notes (Taxable):

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Issue Price</u>	<u>Interest Rate</u>
	\$		

E. Terms of Series D[-1] Notes (Non-AMT):

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Issue Price</u>	<u>Interest Rate</u>
_____	\$ _____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

F. [Terms of Series D-2 Notes (Non-AMT Private Activity):

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Issue Price</u>	<u>Interest Rate</u>
_____	\$ _____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	1 _____	_____

G. Terms of Series E Notes (AMT):

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Issue Price</u>	<u>Interest Rate</u>
_____	\$ _____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

H. Terms of Series F Notes (Taxable):

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Issue Price</u>	<u>Interest Rate</u>
_____	\$ _____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____